



0000021642

## BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
Chairman

WILLIAM MUNDELL  
Commissioner

JEFF HATCH-MILLER  
Commissioner

MIKE GLEASON  
Commissioner

KRISTIN MAYES  
Commissioner

Arizona Corporation Commission

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IN THE MATTER OF THE  
APPLICATION OF QWEST  
COMMUNICATIONS CORPORATION  
D/B/A QWEST LONG DISTANCE FOR  
EXTENSION OF ITS EXISTING  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO INCLUDE AUTHORITY  
TO PROVIDE RESOLD AND  
FACILITIES-BASED LOCAL  
EXCHANGE AND RESOLD LONG  
DISTANCE SERVICES, AND PETITION  
FOR COMPETITIVE CLASSIFICATION  
OF PROPOSED SERVICES, AND  
PETITION FOR COMPETITIVE  
CLASSIFICATION OF PROPOSED  
SERVICES WITHIN THE STATE OF  
ARIZONA.

DOCKET NO. T-02811B-04-0313

SUPPLEMENTAL FILING AND  
MOTION TO AMEND ORDER  
SUSPENDING TIMECLOCK

At the Procedural Conference held June 16, 2005, the Administrative Law Judge ("ALJ") solicited responses from the parties on several questions. Also at that Procedural Conference, counsel for Qwest Communications Corporation ("QCC") voiced objection to the portion of the Procedural Order dated June 9, 2005, ordering the time clock in this matter suspended effective May 18, 2005, and to remain suspended pending the continuance of the hearing. QCC hereby moves for an order amending the June 9, 2005 Procedural Order, and reinstating the original time clock period. Further, QCC files a supplemental reply to the questions made from the bench.

1 **I. THE RECORD IS COMPLETE ON ALL ISSUES SAVE FOR THE**  
2 **"AFFILIATED INTEREST WAIVER" WHICH MAY REASONABLY BE**  
3 **SEVERED FOR FURTHER HEARING. THEREFORE, A DECISION ON**  
4 **THE MERITS OF THE APPLICATION SHOULD NOT BE FURTHER**  
5 **DELAYED.**

6 At the Procedural Conference held on June 16, 2005, the ALJ requested the  
7 parties' views on whether further hearings should be held in this matter. The issues about  
8 which the ALJ seeks the parties' views involve two general matters: The first involves  
9 the limited waiver of A.A.C. R14-2-803 the Commission granted to named Qwest  
10 companies in Decision No. 64654. The second set of issues involves a series of questions  
11 concerning the effect the certification requested herein may have on the incumbent local  
12 exchange carrier ("ILEC") Qwest Corporation ("QC"), its obligation and ability to serve  
13 the public, and its rates.<sup>1</sup> (The second set of issues is referred to below collectively as the  
14 "Public Interest Issues.") QCC respectfully points out that the record in this matter  
15 already addresses the Public Interest Issues at length, and respectfully suggests that post  
16 hearing briefing, which has been requested by QCC, can bring an orderly view to the  
17 record and summarize the matter to assure the Hearing Division that there is a sufficient  
18 factual record upon which to base a decision and order. QCC requests a procedural order  
19 for a single round of post hearing briefs, and that the question of the Certificate of  
20 Convenience and Necessity ("CC&N") be submitted for decision. QCC respectfully  
21 requests that the issues regarding the appropriateness of the limited waiver be severed  
22 from the Application for CC&N because those issues are not elements or criteria for  
23 examining an application for a CC&N.

---

24 <sup>1</sup> QCC understands that the ALJ's questions are generally as follows: Why should QCC be  
25 allowed to take customers and revenue away from QC? What is the difference in the way QC  
26 and QCC revenues would be treated from a ratemaking perspective and what will the affect be  
on QC's revenue and future rates? Explain how the Commission can assure that expansion of  
QC facilities and infrastructure won't suffer if QCC takes customer from QC. Why is Staff's  
alternative recommendation in the public interest?

1           **A. The Record In This Matter Already Addresses The Public Interest**  
2           **Issues At Length, and Further Hearings Are Not Necessary.**

3           QCC does not intend for this Supplemental Filing to serve as its post-hearing brief,  
4 and QCC does not waive its request for a briefing schedule. Short of a full briefing,  
5 however, QCC wishes to point to numerous parts of the record which address the Public  
6 Interest Issues. QCC lists certain quotes and cites here, that QCC submits provide  
7 sufficient factual basis upon which legal arguments may be made in post-hearing briefs,  
8 so that this matter may be submitted for decision.

9           **1. Staff's Second Report dated May 13, 2005 (Hearing Ex. S-2).**

10                       Staff believes that this approach would respond to the  
11                       Company's concern about the ability to market services to  
12                       large Business customers through one entity yet would also  
13                       address Staff's primary concerns which relate to the small  
14                       business and residential markets.

15                       (Hearing Ex. S-2, p.1.)

16                       Limiting QCC's ability to only serve Enterprise customers  
17                       within QC's service territory alleviates Staff's concerns for  
18                       the following reasons:

19                       The Enterprise Market is highly competitive. The  
20                       level of competition by large participants such as MCI and  
21                       AT&T should help temper the behavior of QC & QCC.

22                       (Hearing Ex. S-2, p.2.)  
23  
24  
25  
26

1 Enterprise customers have sufficient resources and impetus to  
2 bring before the Commission matters in which QC may have  
3 evaded its ILC obligations. Any efforts by QC to evade its  
4 ILEC obligations stand the risk of being well-documented  
5 and supported by the very formalities of business to business  
6 sales, marketing and operations. QC retains the Carrier of  
7 Last Resort (COLR) within its service territories.

8 (Hearing Ex. S-2, p.3.)

9 Any claims of discriminating by QC stand the risk of being  
10 well-documented and supported by the very formalities of  
11 business-to-business sales, marketing and operations. QC's  
12 chances of discrimination *within a market segment in which it*  
13 *has diminished presence* seem unlikely and of little  
14 consequence.

15 (*Id.*, emphasis added.)

16 . . . the presence of an affiliated CLEC should not be  
17 injurious to the overall competitive situation given the known  
18 presence of strong business brands, such as MCI and AT&T.  
19 The Enterprise Market may, in fact, welcome another  
20 competitor since QC's presence in the Enterprise Market has  
21 substantially diminished. Staff also notes that no CLEC has  
22 filed objections to QCC's application. QCC has explained  
23 that it seeks to serve customers desirous of interLATA  
24 solutions that cannot be offered by QC. Additional  
25 competitive alternatives for the Enterprise market appear to  
26 have more upside than downside.

(*Id.*)

1                   **2. Transcript of Hearing May 17, 2005 ("TR"). (Exhibit A,**  
2                   **attached hereto).**

3                   One of the reasons Staff is recommending that Qwest  
4                   Communications Corporation's authority be expanded to  
5                   enter the enterprise market is that it is so competitive right  
6                   now.

6                   (Statement of Maureen Scott, TR at p.24, ll.1-4).

7  
8                   Q. What customer segment does QCC initially intend to  
9                   target in the state of Arizona?

10                  A. Initially, the customer segment is that – it's what we call  
11                  the enterprise market, which has been identified as business  
12                  customers having four or more lines.

13                  And oftentimes what we will find is that these customers have  
14                  multiple locations and very often have a national footprint. So  
15                  that while they may have offices in Arizona, they also may  
16                  have offices in California, Colorado, and Washington, D.C.  
17                  for example.

18                  And in those instances, as we have previously discussed or  
19                  touched on, the customer truly is looking for what we kind of  
20                  generically call one-stop shopping. They want a single entity  
21                  with which they can do business for the provision of all of  
22                  their telecommunications needs, whether that is local dial  
23                  tone, whether it is ATM and framed data products, long  
24                  distance, dedicated Internet access.

25                  You take that whole suite of products that are  
26                  telecommunications-based, and they want a single provider  
27                  with a single point of contact. And, more particularly, a  
28                  single bill.

29                  Given the restrictions currently, driven principally by Section  
30                  272 that limits the scope of the business that QC can be in,  
31                  particularly as relates to long distance and interLATA  
32                  services, the Qwest entity cannot offer one-stop shopping and

1 a single point of contact and single bill, unless a single Qwest  
2 entity—in this instance QCC—has the authority to provide  
both long distance as well as local services.

3 (Direct Examination of Mary Ferguson Lafave, TR at pp. 35-36).

4  
5 A. I really go back to my original position, It's a question  
6 of making a binding statement on a non-party to this action.

7 But there is no question in my mind that we absolutely  
8 affirmatively represent that there will be no intent whatsoever  
9 that a grant of QCC's application would not in any way affect  
10 QC's existing obligations under Section 251 of the Act,  
which is nondiscrimination.

11 (Cross Examination of Mary Ferguson Lafave, TR at p.60, ll.13-21).

12 Q. Okay. So when you're talking about facilities-based  
13 service, you're not talking about going in and putting in new  
14 plant?

15 A. What this is talking about is that it would be able to  
16 utilize its existing facilities that QCC already has for the  
17 provision of data service and long distance, and then it would  
18 augment those facilities and connect those facilities to local  
19 facilities that it might obtain from QC or from another  
provider.

20 (Examination by ALJ Wolfe of Mary Ferguson Lafave, TR at 94).

21  
22 A. When QC [sic: QCC] obtains either unbundled  
23 network elements or a finished retail service at an avoided  
24 cost discount, they are obtaining those on basically a month-  
25 to-month basis from QC pursuant to the terms of the  
interconnection agreement.

26 Q. Okay.

1 A. So that QC will own it , and QCC will be utilizing it  
2 just like today AT&T, the CLEC, may purchase a local loop,  
3 you know, on an unbundled basis from QC to reach an end  
4 user.

5  
6 (Examination by ALJ Wolfe of Mary Ferguson Lafave, TR at 95-96).  
7

8 Q. And, therefore, it would be your understanding that  
9 there could be no adverse financial impact arising from either  
10 the sale of a finished service for resale by QCC or the  
11 provision of a UNE to QCC because, again, assuming that the  
12 Commission had set the discount rate correctly and had set  
13 the UNE prices correctly, QC would be made whole;; is that  
14 correct?

15 A. Correct.  
16

17 (Redirect Examination Mary Ferguson Lafave, TR at 103-104).  
18

19 Q. Ms. Lafave, just very briefly, Mr. Berg just asked you  
20 a series of questions regarding how UNE rates are set and  
21 resale rates. Certainly the points that were made could be  
22 presented to the Commission in any AFOR proceeding, could  
23 they not?

24 A. About?

25 Q. About the company not being adversely impacted?

26 A. Certainly.

27 (Recross Examination Mary Ferguson Lafave, TR at 105).  
28

29 A. As far as the technical and financial capabilities, I  
30 found QCC and its parent suitable for granting them a license  
31 to provide the services that they requested, basically resold  
32 local exchange, facilities-based local exchange, and resold  
33 long distance.  
34

1 (Direct Examination John Bostwick, TR at 111).

2  
3 A. Staff believes it was appropriate to recommend that  
4 QCC be allowed to provide its resold long distance services  
5 statewide, and the resold and facilities-based local exchange  
6 services for business within the QC area as well. But for  
resold and facilities-based services as it applies to anything  
other than what we've described as enterprise market, only  
outside the QC serving area.

7 (Direct Examination Armando Fimbres, TR at 129).

8  
9 Q. You had a dialogue with the Judge about evading -- about  
10 the possibility that QC would evade its regulatory  
responsibilities. Do you remember that --

11 A. Yes.

12 Q. -- line of questioning?

13 A. Uh-huh.

14 Q. And you pointed out circumstances where, for example,  
15 QCC might go into a subdivision and then take the position,  
16 we're not QC, so we don't have any unbundling obligations  
under the Act. Do you remember that discussion?

17 A. Yes.

18 Q. Mr. Fimbres, are you aware of any situations in the QC  
19 service territory as it exists today where a carrier has put  
20 facilities into a subdivision and then taken the position that it  
doesn't have to unbundle those -- offer those facilities to a  
competitor on an unbundled basis?

21 A. Do you mean someone other than QC?

22 Q. Well, my first question was are you aware of anyone  
23 doing it?

24 A. If you're referencing Cox, then yes.

25 Q. And the answer to my next question would be it's Cox; is that  
26 correct?



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A. Correct.

Q. And isn't it true that that's an issue that exists today, and, in fact, Staff is looking into that issue actively at this time?

A. It is an issue that exists with CLECs that do not have ILEC affiliates.

Q. And at the moment, since there are no CLECs that have ILEC affiliates, it's an issue that exists with any CLEC today. Is that fair?

A. Today, yes.

(Recross Examination Armando Fimbres, TR at 171-172).

**B. A Decision on the Application for CC&N Should Not Be Delayed Because of Questions Concerning the Limited Waiver of A.A.C. R14-2-803.**

The questions the ALJ has asked with respect to the Limited Waiver of A.A.C. R14-2-803 do not relate to any of the elements or criteria laid out in the Arizona rules relating to applications for a CC&N. QCC respectfully requests that the questions about the waiver be severed from the CC&N proceeding.

**II. MOTION TO AMEND THE PROCEDURAL ORDER SUSPENDING THE TIMECLOCK**

By Procedural Order dated June 9, 2005, the Hearing Division ruled that the time clock in this matter is suspended May 18, 2005 and shall remain suspended pending a continuation of the hearing. This ruling should be amended.

///  
///  
///

1           A.     The Time-Frames Provided by Rule for Processing this Application for a  
2                     Certificate of Convenience and Necessity Have Already Expired.

3           On April 23, 2004, QCC filed an Application and Petition for a CC&N to Provide  
4 Intrastate Telecommunications Services (the "Application"), pursuant to A.A.C. R14-2-  
5 1105. In the Application, QCC indicates that the types of telecommunications services it  
6 wants to provide are resold long distance, resold local exchange, facilities-based long  
7 distance, and facilities-based local exchange services. Arizona law provides for limits on  
8 the time that administrative agencies may take to process applications for licenses.  
9 A.R.S. §41-1072 *et seq.* The Commission's Rules promulgated in accordance with the  
10 statute specify time-frames for processing applications for CC&Ns. A.A.C. R14-2-510  
11 (E)(2) provides that Staff shall notify the applicant in writing that the application is either  
12 complete or deficient within 30 calendar days after receipt of the application. A.A.C.  
13 R14-2-510(E)(6) states that the administrative completeness review time frame for  
14 purposes of A.R.S 41-1072 *et seq.*, is 30 calendar days. That statute provides as follows:

15  
16                     If an agency does not issue a written notice of administrative  
17                     completeness or deficiencies within the administrative  
18                     completeness review time frame, the application is deemed  
19                     administratively complete. If an agency issues a timely  
                      written notice of deficiencies, an application shall not be  
                      complete until all requested information has been received by  
                      the agency.<sup>2</sup>

20           Since no such notice was issued by Staff on or before the thirtieth day following the filing  
21 date of April 23, 2004, the Application filed by QCC must be deemed administratively  
22 complete as of May 23, 2004. By A.A.C. R14-2-510(E)(6), the period for substantive  
23 review is 150 days from the date of notice of administrative completeness, and the period  
24 for overall licensing is 180 days from the date of filing. During that period there were no  
25

26                     <sup>2</sup> A.R.S. 41-1075(C).

1 requests for extension or continuance by the Applicant or the Commission. Therefore,  
2 the time clock expired on November 28, 2004.

3 B. There Is No Good Cause for Suspending the Time Clock.

4 Because the time clock in this matter has already expired, it is doubtful whether  
5 any purposes are served by continuing to track the time for this proceeding. Without  
6 waiving its claims that the time clock has expired, however, QCC states that the  
7 currently-ordered suspension of the time clock is not supported by good cause and is  
8 therefore unjust. The running of the time-clock should be re-instated as of May 18, 2005.

9 The ALJ has stated that the reason the time clock was suspended was that the  
10 parties had not requested a procedural conference for the purpose of discussing the  
11 continuing conduct of this matter, including the date by which Staff can file its specific  
12 written recommendations regarding the limited waiver of the Commission's Affiliate  
13 Interests Rules granted in Decision No. 64654, as well as any other Staff  
14 recommendations, and a date for QCC's written response thereto. QCC acknowledges  
15 that at the close of the hearing on May 17, 2005, QCC and Staff agreed to confer and "get  
16 back to" the ALJ on a proposed procedural schedule *relating to Staff's formulation of a*  
17 *new Staff recommendation* regarding the affiliated interest waiver, and QCC's right to  
18 respond to that recommendation. (TR at 231-232.)<sup>3</sup> In the days and weeks following the  
19 May 17, 2005 hearing, QCC counsel contacted Staff counsel several times to ascertain  
20 Staff's intentions, and was advised that Staff had not formulated its position. Staff  
21 ultimately stated its position to Qwest after the ALJ issued the June 9, 2005 Procedural  
22 Order. Since it was not QCC's place to formulate a position in the first instance, and  
23 since QCC could not state its response until Staff had stated its position, QCC did not  
24 commit any delay.

25 \_\_\_\_\_  
26 <sup>3</sup> The directive for Staff to formulate a Staff recommendation originated in the Procedural Order  
dated February 1, 2005.

1 Since QCC did not commit any delay, and could not propose a procedural  
2 schedule on an issue that was up to Staff to define in the first instance, it is unreasonable  
3 and unjust to QCC to suspend the time clock on account of the period of time between  
4 May 17, 2005 and Staff's June 15, 2005 filing of its position on the affiliated interests  
5 waiver.

6 The Procedural Order dated June 9, 2005 also suspends the time clock until the  
7 continuation of the hearing in this matter. QCC has not requested a continuation of the  
8 hearing. The subjects of a potential continuation are (a) the Staff's position regarding the  
9 partial waiver of the affiliated interest rule, and (b) the matters addressed above in this  
10 Supplemental Filing and Motion, discussed above as "Public Interest Issues." QCC did  
11 not request hearing on any of these matters, and has requested the case to be decided on  
12 the basis of the record as it exists now, with post-hearing briefs to be filed. QCC has not  
13 requested the continuance or committed delay of this proceeding. Nor has the  
14 Commission or any party stated a reason for the suspension of the time clock, much less  
15 made a showing that there is good cause for suspension.

16 For the foregoing reasons, QCC respectfully moves the Commission for an order  
17 re-instating the running the time clock as of May 18, 2005.

18 RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of June, 2005.

19 QWEST COMMUNICATIONS CORPORATION

20  
21 By: 

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23 Corporate Counsel  
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*and*

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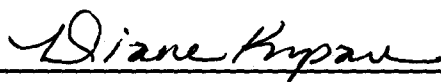
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\_\_\_\_\_

# **EXHIBIT A**

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION ) DOCKET NO.  
OF QWEST COMMUNICATIONS ) T-02811B-04-0313  
CORPORATION D/B/A QWEST LONG )  
DISTANCE FOR EXTENSION OF ITS )  
EXISTING CERTIFICATE OF )  
CONVENIENCE AND NECESSITY TO )  
INCLUDE AUTHORITY TO PROVIDE )  
RESOLD AND FACILITIES-BASED LOCAL )  
EXCHANGE AND RESOLD LONG DISTANCE )  
SERVICES IN ADDITION TO ITS )  
CURRENT AUTHORITY TO PROVIDE )  
FACILITIES-BASED LONG DISTANCE )  
SERVICES, AND PETITION FOR )  
COMPETITIVE CLASSIFICATION OF )  
PROPOSED SERVICES WITHIN THE )  
STATE OF ARIZONA. )

At: Phoenix, Arizona

Date: May 17, 2005

Filed:

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VOLUME I

(Pages 1 through 234)

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1 BE IT REMEMBERED that the above-entitled and  
2 numbered matter came on regularly to be heard before  
3 the Arizona Corporation Commission, 1200 West  
4 Washington Street, Phoenix, Arizona, commencing at  
5 10:00 a.m. on the 17th day of May, 2005.  
6  
7 BEFORE: TEENA WOLFE, Administrative Law Judge  
8  
9 APPEARANCES:  
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1 ALJ WOLFE: Good morning, and welcome to the  
2 Arizona Corporation Commission. This is the time and  
3 place set for the hearing in the matter of Qwest  
4 Communications Corporation's application and petition  
5 for a Certificate of Convenience and Necessity to  
6 provide interstate telecommunications services.  
7 I think that I read the caption wrong. I'm  
8 going to go again here. In the matter of the  
9 application of Qwest Communications Corporation, doing  
10 business as Qwest Long Distance, for extension of its  
11 existing Certificate of Convenience and Necessity to  
12 include authority to provide resold and  
13 facilities-based local exchange and resold long  
14 distance services in addition to its current authority  
15 to provide facilities-based long distance services, and  
16 petition for competitive classification of proposed  
17 services within the state of Arizona. The Docket  
18 No. is T-02811B-04-0313.  
19 My name is Teena Wolfe, and I'm the  
20 Administrative Law Judge assigned to this proceeding.  
21 And we'll begin this morning by taking  
22 appearances, beginning with the Applicant.  
23 MR. BERG: Yes. Timothy Berg of Fennemore  
24 Craig, and Norman Curtright of Qwest Law Department on  
25 behalf of the Applicant.

2 (Pages 2 to 5)



Page 6

1 ALJ WOLFE: Thank you. Good morning.  
2 And for Staff?  
3 MS. SCOTT: Good morning, Your Honor. Maureen  
4 Scott on behalf of Commission Staff.  
5 ALJ WOLFE: Thank you. Good morning. This  
6 would be the time that we would take public comment.  
7 Are there any members of the public present to  
8 make public comment?  
9 (No response.)  
10 ALJ WOLFE: Let the record reflect that there  
11 are none.  
12 There's a procedural matter that I would like  
13 to cover given the confusion that came about in the  
14 last proceeding when QCC was granted its CC&N. I would  
15 like for the witnesses to address in their testimony  
16 today, in addition to their own filings, the accuracy  
17 of the filings made in this docket by the other party.  
18 And this is important for clarity in the record  
19 since there was no prefiled testimony in this case  
20 which would provide a forum for rebuttal of factual  
21 statements made in the filings.  
22 So today's hearing provides the opportunity for  
23 you to express your disagreement with any statements of  
24 fact that are in the record in this proceeding. And  
25 failure to register any disagreement with factual

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1 statements made in the record will indicate to me when  
2 I review the record in preparation of the recommended  
3 opinion and order that there's no disagreement with  
4 statements appearing in the filings.  
5 Now, if the parties need additional time to go  
6 over to make sure that their witnesses are familiar  
7 with any inaccuracies or misstatements that they may  
8 believe appear in the order, you can certainly take  
9 some time to do that this morning. But I would expect  
10 the witnesses to cover that.  
11 Ms. Scott?  
12 MS. SCOTT: Your Honor, I have a question  
13 regarding that. Are you referring also to, for  
14 instance, Qwest's response to Staff's initial report  
15 and recommendation, which took the form of more legal  
16 argument?  
17 ALJ WOLFE: No. Mostly I'm looking here at  
18 factual issues, factual statements such as -- I know  
19 that last time when QCC was granted its CC&N, there was  
20 a statement in the Staff Report that said what relief  
21 the company -- that QCC was requesting, and I based my  
22 proposed order on that.  
23 And in this filing, I know QCC said that  
24 inexplicably something happened in the proposed order.  
25 And it was never brought to my attention on the record

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1 that what was in the Staff Report didn't reflect what  
2 QCC was requesting. And I don't want to have anything  
3 like that happen in this proceeding.  
4 MS. SCOTT: Okay. Thank you for that  
5 clarification.  
6 MR. BERG: Your Honor, may I make a suggestion?  
7 We've gone, obviously, through all the exhibits in the  
8 case. We haven't done it with that particular purpose  
9 in mind.  
10 And I guess what I would suggest that we do is  
11 go ahead and proceed this morning, and have you give us  
12 some period of time, a day or two, to go back and look  
13 at it, have the witness look at it, and, if we have  
14 some problem, we'll file something supplementally. And  
15 then if we need to do something about it, maybe we can  
16 do that then.  
17 I'm afraid that having the witness sit and read  
18 everything in this docket at this point is going to  
19 slow us down more than not.  
20 ALJ WOLFE: Mostly I was referring to the Staff  
21 Report and also to the company's filings. I think that  
22 if you have a disagreement, you would bring that to my  
23 attention. But if when I'm going over the record, if  
24 there's nothing in the record to tell me that what is  
25 asserted in a filing is not exactly how things are,

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1 then I won't have any way of knowing that.  
2 MR. BERG: Again, I would suggest that clearly  
3 we're prepared this morning to address the substantive  
4 disagreements between Staff and Qwest. That's not to  
5 say there may not be statements which we would believe  
6 are not quite accurate, but that aren't material to  
7 those issues, that I'm not sure Ms. LaFave is prepared  
8 to address this morning.  
9 I guess if you give us some period of time,  
10 say, until the end of the week to get you something in  
11 writing if we see something that creates an accuracy  
12 concern, I think that would be the best way to proceed  
13 this morning to get this done.  
14 ALJ WOLFE: Ms. Scott, would you be willing to  
15 do the same?  
16 MS. SCOTT: Yes, Your Honor. That's fine.  
17 ALJ WOLFE: That's not a problem then.  
18 And you indicated at the telephonic conference  
19 yesterday, Mr. Berg, that you have just one witness to  
20 present?  
21 MR. BERG: Yes. That's correct, Your Honor.  
22 ALJ WOLFE: Okay. Ms. Scott, you said that you  
23 had two witnesses and maybe three. Is that still the  
24 case?  
25 MS. SCOTT: Yes, Your Honor. We will probably

3 (Pages 6 to 9)

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1 have three witnesses.

2 ALJ WOLFE: Okay. Can you tell me which  
3 witness will be covering which subject area? Do you  
4 know that at this time?

5 MS. SCOTT: Yes, I do. Mr. Bostwick will be  
6 covering the Applicant's application to the extent that  
7 it addresses the financial and technical capability of  
8 QCC to provide the services requested.

9 Mr. Fimbres is responsible for the discussion  
10 of the scope of QCC's application, limitations upon it  
11 and competitive analysis, as well as the  
12 recommendations in that regard.

13 Mr. Abinah will testify as to any policy issues  
14 or policy questions that Qwest may have.

15 ALJ WOLFE: Thank you. And which of those  
16 categories would include any ratemaking questions?

17 MS. SCOTT: I would say, Your Honor, that that  
18 could fall under either Mr. Bostwick's or possibly  
19 Mr. Fimbres' testimony. So I would recommend that you  
20 pose the question first to Mr. Bostwick. If he cannot  
21 respond and feels that it's more appropriately  
22 addressed to Mr. Fimbres, he can so state.

23 ALJ WOLFE: Thank you.

24 Are there any procedural issues that the  
25 parties would like to raise before we go to opening

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1 the expansion of services I've described.

2 Subsequently, in December of 2004, Qwest filed a second  
3 supplement -- or filed a first supplement to its  
4 application, and about a month later we filed an errata  
5 to that.

6 On February 23, Staff filed its Staff Report.  
7 Subsequent to that, the parties worked together to try  
8 to resolve this docket and to at least narrow the  
9 issues that would be presented to you today. As a  
10 result of those efforts to narrow the issues, on May 13  
11 Staff filed a supplement to its Staff Report, and on  
12 May 15 Qwest filed a second supplement to its  
13 application. And I think that the net effect of that  
14 process is just to really narrow at least the disputed  
15 issues that are in front of you today.

16 The parties have really agreed, I think, at  
17 this point so that there's no reason to litigate these  
18 issues, that QCC has the technical, managerial and  
19 financial competence to be both a long distance and  
20 local service provider throughout the state of Arizona,  
21 which is the territory it's seeking.

22 The Qwest second supplement changes the scope  
23 of the application that it filed in terms of what  
24 services it wants to provide there. And I briefly want  
25 to kind of walk you through that right now, because

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1 statements?

2 (No response.)

3 ALJ WOLFE: Mr. Berg.

4 MR. BERG: Thank you, Your Honor.

5 QCC currently has a statewide certificate  
6 issued by this Commission to provide facilities-based  
7 interexchange or long distance service. The issue  
8 before you today is an application by QCC to expand its  
9 Certificate of Convenience and Necessity to add three  
10 additional types of service to that certificate, while  
11 retaining its current facilities-based certificate.

12 First, QCC has asked to add resold long  
13 distance service to its certificate. It's asked to add  
14 resold local exchange service to its certificate, and  
15 it's asked to add facilities-based local exchange  
16 services to its certificate. So the application that  
17 Qwest filed covers those -- or that QCC filed covers  
18 those four services.

19 This morning I should make it clear that the  
20 Applicant in this proceeding is QCC and not Qwest  
21 Corporation. I will probably lapse into calling QCC  
22 Qwest. And unless I make it clear that I'm talking  
23 about Qwest Corporation when I use either QCC or Qwest,  
24 I'm talking about the Applicant today, QCC Corporation.

25 We filed the original application asking for

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1 most of this is undisputed, but the disputes that  
2 remain relate to this and really turn around this  
3 issue.

4 First, QCC wants to be given a certificate that  
5 would permit it to resell long distance services  
6 statewide to match its facilities-based long distance  
7 certificate.

8 It wants to be able to provide resold and  
9 facilities-based local exchange services to any  
10 customer in the state of Arizona who resides outside  
11 the Qwest Corporation existing service territory today.

12 The third thing it's asking for is authority to  
13 provide resold or facilities-based and facilities-based  
14 local exchange service to what I'm going to call  
15 enterprise customers. Those are business customers who  
16 take four or more lines within the QCC or Qwest  
17 Corporation existing service territory.

18 If you look at Staff's supplemental report in  
19 Qwest's second supplement to its application, the  
20 parties pretty much agree that that's the scope of the  
21 certificate we're talking about and that it ought to be  
22 granted.

23 The remaining dispute today is really with some  
24 conditions that Staff has requested. In its original  
25 Staff Report, Staff listed a series of conditions. And

4 (Pages 10 to 13)

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1 I think the only quarrel Qwest had with those  
2 conditions were the ones that were going to restrict  
3 its authority to provide any services in the existing  
4 QC service territory. Both the Staff's position and  
5 Qwest's position have evolved past that point, so  
6 that's not really an issue in dispute anymore. But  
7 Qwest accepts the other conditions that aren't related  
8 to limiting the scope of its service in the QC service  
9 territory.

10 In Staff's supplement to its report they filed  
11 on Friday, they've listed a series of recommendations  
12 or conditions for the certificate that Qwest has  
13 applied for and for the one they've recommended.

14 And, again, Qwest largely accepts those --  
15 agrees with those recommendations. We really have  
16 concerns about two of them and just want to -- and then  
17 also just want to note a concern about a third one,  
18 which I don't think is really something that will be  
19 litigated today.

20 The first recommendation that Qwest has  
21 reservations about or objections to is Staff's  
22 Recommendation No. 3 contained in the Staff Report.  
23 And I've talked to Ms. Scott -- I'm sorry. The  
24 supplement to the Staff Report. And I've talked to  
25 Ms. Scott, and I believe that's going to be Exhibit S-2

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1 when we get to introducing things into evidence.

2 MS. SCOTT: Yes.

3 MR. BERG: And if you turn to Page 7 of S-2  
4 that's the list of conditions I'm talking about. The  
5 first condition we're concerned about is Condition  
6 No. 3, which basically says that notwithstanding the  
7 recommendation that Staff has made in this report for a  
8 certificate to be granted to QCC, that QCC cannot file  
9 for a period of 24 months from the date of the  
10 Commission's order granting this certificate for an  
11 expansion of its certificate, unless it can demonstrate  
12 all of three criteria that are set forth in Staff's  
13 report.

14 Qwest objects to this recommendation really on  
15 two grounds. One, at this point, it's unnecessary.  
16 Yesterday, Qwest amended its request for a certificate  
17 to limit it to only business customers, or enterprise  
18 customers, pardon me, in the QC service territory. So  
19 the restriction here is kind of beside the point. It's  
20 become moot. We're not asking for anything more today.

21 But equally importantly, Staff really hasn't  
22 provided any basis in its report for why it's  
23 appropriate to restrict QCC's right to file an  
24 application, and why it's appropriate to impose a  
25 different three- to five-part to eight-part --

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1 depending on kind of how you count the way Staff does  
2 its conditions -- test on Qwest that isn't applicable  
3 to any other CLEC that would want to come in and apply  
4 for a territory or expand its territory. So it's  
5 Qwest's position that this is really an unnecessary and  
6 improper condition.

7 The second condition that Qwest is concerned  
8 about is found on Page 8 of Staff's supplement report  
9 Exhibit S-2. And that's Condition No. 8, which  
10 occupies seven-eighths of that page. And I'm going to  
11 walk through the two pieces of it and kind of generally  
12 explain to you what our objections are, and then  
13 Ms. LaFave will cover that in more detail later.

14 First, condition 8.a requires QCC to file  
15 certain reports every six months to Staff. And QCC has  
16 no objection to 8.a, which has a subpart 1 and a  
17 subpart 2.

18 The issue for QCC is subpart b. of Staff's  
19 request. And subpart b. of Staff's Recommendation  
20 No. 8 would require QC to file five different reports  
21 every six months. And those are listed in subparts  
22 b.1 through 5. You're going to here probably quite a  
23 bit about those today.

24 Qwest's first objection to this is obviously  
25 that, one, it purports to impose an obligation on Qwest

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1 Corporation in this docket which isn't a party to the  
2 docket. The Applicant here is QCC, not QC. And we  
3 think it's inappropriate as part of an order to impose  
4 an obligation on a non-party.

5 The second point, and probably equally  
6 important, is we think that the evidence will  
7 demonstrate today that the information contained in  
8 these five reports or five categories of reports really  
9 have nothing to do with whether QCC is a fit or proper  
10 party to provide local exchange service. It has  
11 nothing really to do with transactions between QCC and  
12 QC, its affiliate. And it really has nothing to do  
13 with whether QCC is providing an appropriate level of  
14 service to its customers on a going-forward basis.

15 In other words, these aren't conditions that  
16 are calculated to allow the Commission at some point in  
17 the future to look back and say, we certificated QCC to  
18 provide service and they're doing a bad job or not  
19 meeting their obligations or they're not providing  
20 service to people. Rather, these are reports that  
21 relate to QC and, if appropriate at all, are more  
22 appropriately the subject of other dockets.

23 That brings us to Recommendation No. 9. And  
24 our concern about Recommendation No. 9 is tied into our  
25 concern about number 8. What number 9 provides,

5 (Pages 14 to 17)

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1 essentially, is that Staff can use all the reports it  
2 gets in number 8 in future AFOR price cap proceedings  
3 to evaluate QC's revenue requirement.  
4 As to the material that QCC would provide Staff  
5 under 8.a.1 and 2, QCC has no objection to Staff using  
6 that information as it would any other information that  
7 is reported to it. It's Qwest's position that that  
8 would be confidential information and would need to be  
9 subject to a protective order or agreement, but other  
10 than that we have no quarrel with Staff's ability to  
11 look at that information and use it in any way they  
12 would use information that was reported by AT&T or  
13 Eschelon or MCI, or any other CLEC.  
14 Let me make this clear, though, that QCC's  
15 agreement to that is not an agreement by QC that this  
16 information would have any relevance in any later QC  
17 docket. And QC, obviously, which isn't represented  
18 here, would reserve its rights to object to any use of  
19 that information.  
20 The problem with the second half of 9, which is  
21 the reports that we think are inappropriate because QC  
22 isn't a party, Staff later wants to be able to use  
23 against QC in a docket -- or use against it is probably  
24 the wrong word. Using it in connection with a QC  
25 docket really raises the same concerns that 8 does. QC

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1 is not a party here. We think it's premature for the  
2 Commission to determine whether those things are useful  
3 or appropriate in some future unspecified docket.  
4 With those reservations, QC is willing to  
5 accept -- QCC -- I'm sorry -- is willing to accept the  
6 conditions contained in the original Staff Report to  
7 the extent that they haven't been superceded by the  
8 supplemental report, and to accept the other conditions  
9 in the supplemental report.  
10 So I think for purposes of today's hearing, at  
11 least, it's QCC's view that the issues relate around  
12 the acceptability of these conditions.  
13 We think you're going to find at the end of the  
14 hearing today that the record is undisputed that QCC is  
15 a fit and proper party to provide resold long distance  
16 service, resold and facilities-based local exchange  
17 services in the manner described in its second  
18 supplement to the application, that there's really no  
19 disagreement between the parties over the scope of the  
20 services that QCC should be permitted to provide, and  
21 that the entry of an order authorizing that certificate  
22 is in the public interest.  
23 Thank you.  
24 ALJ WOLFE: Thank you, Mr. Berg.  
25 Ms. Scott.

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1 MS. SCOTT: Thank you, Your Honor.  
2 Last year, Qwest Communications Corporation  
3 filed an application to expand its certificate in  
4 Arizona to provide statewide competitive local exchange  
5 service, which would include the provision of  
6 competitive resold and facilities-based local exchange  
7 service within its affiliate Qwest Corporation's  
8 service territory, as well as statewide authority to  
9 provide resold long distance service. As Mr. Berg  
10 noted, the company had already been approved by the  
11 Commission to provide facilities-based long distance  
12 service.  
13 Qwest Communications Corporation, or the  
14 Applicant, is a 272 affiliate of Qwest Corporation, as  
15 is Qwest Long Distance Corporation.  
16 Based upon QCC's original application and its  
17 amendment to that application or supplement, and the  
18 information available to Staff, Staff initially  
19 recommended that the company be authorized to provide  
20 competitive resold and facilities-based local exchange  
21 service outside of Qwest Corporation's service  
22 territory only, but that it have the authority to  
23 provide statewide long distance service.  
24 In its initial Staff Report, Staff had  
25 identified five concerns with Qwest Communications

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1 Corporation providing local exchange service in  
2 competition with its affiliate Qwest Corporation.  
3 Staff also noted that it had not been either Staff's or  
4 the Commission's policy to date to allow a CLEC of an  
5 affiliated -- or a CLEC that's affiliated with an ILEC  
6 to operate within that ILEC's service territory.  
7 The parties subsequently met to see if they  
8 could resolve some of their differences with respect to  
9 QCC's application. As noted in Staff's report that was  
10 filed on Friday of last week, the discussions focused  
11 on the various segments of Qwest's market primarily.  
12 Staff's supplemental report noted that while  
13 the parties could not come to agreement ultimately on  
14 the conditions -- and I think Mr. Berg has stated the  
15 same thing today -- Staff was proposing a supplemental  
16 recommendation which would permit QCC to provide  
17 competitive resold and facilities-based local exchange  
18 service within QC's service territory to enterprise  
19 customers subject to conditions.  
20 This, in Staff's opinion, would allow Qwest to  
21 provide a single contract and integrated bill to  
22 business customers for local and long distance service.  
23 QCC had stated that many of its larger business  
24 customers desired this sort of one-stop shopping.  
25 So Staff, through its supplemental report, was able to

6 (Pages 18 to 21)

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1 accommodate the primary concern of the company with  
2 respect to the provision of local service in  
3 competition with QC.

4 At the same time, Staff's concerns, which had  
5 to do with QCC's provision of competitive local service  
6 in the residential market and small business markets  
7 within QCC's areas, would also be resolved because the  
8 scope of authority given to QC at this time would be  
9 limited to the large and medium business market,  
10 otherwise referred to as the enterprise market.

11 Yesterday, QCC filed a second supplement to its  
12 application which limited the scope of authority it was  
13 seeking in QC's service territory to providing  
14 competitive local exchange service to enterprise  
15 customers.

16 As Mr. Berg noted, Staff is not today  
17 contesting the Applicant's financial or technical  
18 capability to provide the services requested. As  
19 Mr. Bostwick will state, Staff believes that Qwest  
20 Corporation or Qwest Communications Corporation meets  
21 the criteria, financial and technical, to provide the  
22 services requested in Arizona.

23 As Mr. Berg also noted, Qwest agrees with all  
24 of Staff's recommendations in its supplemental report  
25 with respect to the limitation on scope of authority,

Page 23

1 with the exception of the reporting requirements  
2 contained in item 8 of Staff's supplemental  
3 recommendation, and the time periods associated with  
4 future applications to expand the scope of its  
5 authority to provide competitive local service to  
6 residential customers and small business customers in  
7 QC's territory, which is item 3 or Recommendation No. 3  
8 in Staff's supplemental report.

9 Staff knows that the requirements for  
10 reporting data which are outlined in Recommendation  
11 No. 8 and the time periods contained in Recommendation  
12 No. 3 are very important. We do not believe that the  
13 reporting requirements will be unduly burdensome for  
14 either QCC or QC. The reporting data is tied to the  
15 company's ability to submit subsequent application for  
16 the residential and small business markets.

17 This is important because Staff needs a  
18 reference point and information in determining whether  
19 to recommend to the Commission that QCC's authority be  
20 expanded in the future.

21 The reporting data will show the operational  
22 impact on QC of having its own affiliate operate in  
23 competition with it. It will also show the degree of  
24 competition in the various market segments in QC's  
25 service territory.

Page 24

1 One of the reasons Staff is recommending that  
2 Qwest Communications Corporation's authority be  
3 expanded to enter the enterprise market is that it is  
4 so competitive right now. And that should limit, to  
5 some degree, any attempt by QC to leverage -- of any  
6 attempt by QCC to leverage QC's ILEC position.

7 The data will also allow Staff to examine  
8 compliance issues. It is critical in Staff's  
9 perspective to have a sufficient amount of data in  
10 which to make an informed decision. Therefore, Staff  
11 is recommending that any future application by QCC be  
12 accompanied by at least 18 months of data, commencing  
13 from the date the Commission issues its order in this  
14 case.

15 In response to a few of the concerns that  
16 Mr. Berg just identified with respect to the reporting  
17 data, it's my understanding that Qwest has no objection  
18 to 8.a.1 or 2, but objects to item b. which imposes an  
19 obligation on QC which is not a party to this  
20 proceeding.

21 If you look at Staff's Recommendation No. 3 in  
22 the supplemental report, it recommends future  
23 applications if the Applicant can meet all of the  
24 following criteria. And one of the criteria is that QC  
25 and QCC can demonstrate that there will be no adverse

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1 impact on QC's competitive operations. Another  
2 criteria goes to competitive conditions in the market.  
3 And then the last criteria goes to resolving Staff's  
4 concerns identified in its original Staff Report.

5 Much of the data that is necessary for a future  
6 evaluation resides with QC. Therefore, it's necessary  
7 to obtain this information from QC because, simply put,  
8 QCC does not have access to much of the information.

9 QC and QCC are affiliates. One will be  
10 competing with the other. There are a lot of affiliate  
11 reporting requirements now in effect for both  
12 companies. QCC is asking for the ability to enter QC's  
13 market area. There's no reason why, in Staff's  
14 opinion, QC should not be required to provide this  
15 data. If necessary, they can provide it to QCC and QCC  
16 can be obligated to provide it to the Commission. But  
17 all in all, the data -- a lot of the important data  
18 resides with QC.

19 And as part of Staff's recommendation of  
20 allowing the company this expanded authority, one of  
21 the conditions is that QC agree to provide this data  
22 for compliance purposes and for evaluation of future  
23 applications.

24 With respect to Condition No. 9, Staff believes  
25 that condition is very important. It was my

7 (Pages 22 to 25)

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1 understanding that QC wanted the ability to be able to  
2 make any arguments in the AFOR case with respect to any  
3 data that Staff may use from this case, and Staff would  
4 have no objection to that.

5 With respect to Condition No. 3, I believe  
6 Mr. Berg stated that Qwest believes that it was  
7 unnecessary. Staff disagrees wholeheartedly with that  
8 position. Without the data and the time period for  
9 which the data is required, nothing would prevent QCC  
10 from coming back in the day after the Commission enters  
11 its order in this case asking for expanded authority  
12 for QCC to provide service in the residential and small  
13 business markets.

14 There's simply no data at this point, in  
15 Staff's opinion, that would support QCC's entry into  
16 those markets at this time. The data that Staff is  
17 requesting and the 18 months' time period is indicative  
18 of what Staff believes is a sufficient amount of data  
19 in order to render an informed recommendation to the  
20 Commission.

21 QCC also noted that there's no basis or right  
22 to restrict the company's ability to file a subsequent  
23 application and that the obligation doesn't apply to  
24 other companies. Again, I would just like to note that  
25 it has not been Staff's position or the Commission's

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1 policy, in Staff's opinion, to allow a CLEC that's  
2 affiliated with an ILEC to provide competitive local  
3 exchange service within the ILEC's service territory.

4 This is something that Staff is recommending in  
5 this case for QCC because it's a concern that it  
6 identified with respect to marketing and the ability to  
7 provide one-stop shopping to large business customers.  
8 Therefore, we believe that all of these reporting  
9 requirements are necessary and appropriate.

10 Thank you, Your Honor.

11 ALJ WOLFE: Thank you. Mr. Berg, are you  
12 prepared to call your witness?

13 MR. BERG: I am, Your Honor. Qwest calls Mary  
14 LaFave.

15  
16 MARY FERGUSON LaFAVE,  
17 called as a witness on behalf of the Applicant, having  
18 been first duly sworn by the Certified Court Reporter  
19 to speak the whole truth and nothing but the truth, was  
20 examined and testified as follows:

21  
22 DIRECT EXAMINATION

23  
24 Q. (BY MR. BERG) Ms. LaFave, would you please  
25 state your full name for the record.

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1 A. Yes. It's Mary Ferguson, F-E-R-G-U-S-O-N,  
2 LaFave, L-A-F-A-V-E.

3 Q. And Ms. LaFave, would you briefly describe who  
4 you're employed by and what your background is?

5 A. I am employed by Qwest Services Corporation. I  
6 joined Northwestern Bell, which was part of the former  
7 Bell system, in 1978 in Minneapolis in the law  
8 department; and then in 1991 moved into human  
9 resources; and then in 1998 moved into an organization  
10 called Enterprise America, which was a segment of the  
11 former U S WEST that offered high-speed services like  
12 DSL, Internet access, ATM and frame relay.

13 After the merger with Qwest in the summer of  
14 2000, I moved into public policy where I currently am  
15 still employed.

16 Q. And Ms. LaFave, have you previously testified  
17 before state regulatory commissions in the Qwest  
18 service territory?

19 A. I have. I've testified in Oregon and  
20 Washington, Minnesota, Iowa, Utah, and Nebraska. And I  
21 have participated in other proceedings as well.

22 Q. And what is the purpose of your testimony?

23 A. The purpose of my testimony is to support and  
24 demonstrate that Qwest Communications Corporation, also  
25 called QCC, has the financial, technical, and

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1 managerial expertise to justify its being awarded this  
2 Certificate of Convenience and Necessity to provide  
3 resold long distance services, as well as facilities-  
4 based and resold local services. In addition, to  
5 demonstrate that it is in the public interest to grant  
6 this Certificate of Convenience and Necessity to QCC.

7 Q. Ms. LaFave, do you have in front of you on the  
8 podium Applicant's Exhibits 1 through 4?

9 A. Yes, I do.

10 Q. Could you identify each of those for the  
11 record, please.

12 A. Yes. Exhibit A-1 is the initial filing by QCC  
13 for the Certificate of Convenience and Necessity to  
14 provide the services as we discussed before, resold  
15 long distance, as well as facilities-based and resold  
16 local services.

17 The second, A-2, is the supplement to the  
18 application and petition. It was filed in December of  
19 2004, and expanded the tariff offering that had been  
20 filed. And that occurred as a result of discussion, I  
21 believe, that Qwest had with Staff, a concern that in  
22 order to make sure that our Certificate of Convenience  
23 and Necessity was as broad as possible with respect to  
24 the services offered, that we would expand our current  
25 tariff filing to offer local services, including call

8 (Pages 26 to 29)

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1 features, et cetera.

2 Q. Okay.

3 A. Exhibit A-3 is a notice of errata that makes  
4 corrections in the tariff filing that was associated  
5 with the December '04 filing marked as Exhibit A-2.

6 Q. And A-4?

7 A. A-4 was a filing that has been mentioned  
8 earlier today. It's a second supplement to the initial  
9 application and petition. And in this one, Qwest has  
10 narrowed its request for authority to serve enterprise  
11 customers, which have been identified as customers  
12 having four or more lines.

13 Q. And it's narrowed its request for authority in  
14 that regard as to which part of the state of Arizona?

15 A. Throughout the entire state of Arizona,  
16 including areas currently served by Qwest Corporation,  
17 the ILEC.

18 Q. Just so we're clear on the record, is it your  
19 understanding that Qwest is asking for authority to  
20 provide local exchange service to only enterprise  
21 customers only in the part of the state of Arizona that  
22 Qwest Corporation currently serves?

23 A. QCC is seeking to provide all manner of  
24 services, local services and long distance services,  
25 throughout the state of Arizona in QC, the ILEC's,

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1 territory. It is seeking to provide local and long  
2 distance services to enterprise customers, defined as  
3 those customers as having four or more lines.

4 Q. Is it your understanding, Ms. LaFave, that  
5 Qwest's request to provide resold long distance service  
6 in any portion of the state is limited to enterprise  
7 customers?

8 A. No. It is offered to any customer throughout  
9 the state of Arizona.

10 Q. Thank you. Ms. LaFave, have you examined  
11 Exhibits A-1 through 4?

12 A. I have.

13 Q. And are the statements in them true to the best  
14 of your knowledge?

15 A. I want to note just a couple of changes that  
16 have come to my attention subsequent to the filing. In  
17 particular, there has been a change in the directors  
18 and officers of QCC. Cliff Holtz has been identified  
19 as both the director and an officer. He has since left  
20 the company and has been replaced by Tom Richards.

21 Secondly, in the initial filing, as well as, I  
22 believe, in the second supplement, we go through and  
23 discuss a variety of regulatory actions that have been  
24 filed against QCC, and I wanted to update a couple of  
25 those.

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1 With respect to the actions filed with the FCC,  
2 we have noted two, one having to do with QCC's making  
3 available System Signaling 7. That has been resolved.

4 In addition, there were two actions related to  
5 Touch America. In one action, QCC entered into a  
6 settlement with the FCC and resolved that. And the  
7 second, it has not been officially dismissed or further  
8 acted upon due principally because of Touch America's  
9 bankruptcy, and that entity is no longer driving that  
10 forward.

11 In addition, there were mentions made of  
12 actions in Delaware, Missouri, and Oklahoma.  
13 Those have been resolved.

14 And, lastly, a new proceeding has come up in  
15 the state of Connecticut, and it has to do with trying  
16 to scope out, with respect to the provision of operator  
17 services, the extent to which QCC is entitled to do  
18 that since currently it is principally offering a data  
19 service. And there are issues as to whether or not it  
20 needs to be offering local voice service in order to be  
21 offering operator services.

22 MR. BERG: Thank you. We move the admission of  
23 Exhibits A-1 through A-4.

24 ALJ WOLFE: Are there any objections?

25 MS. SCOTT: No objection, Your Honor.

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1 ALJ WOLFE: Okay. A-1 through A-4 are  
2 admitted.

3 Q. (BY MR. BERG) Ms. LaFave, could you please  
4 describe the Applicant, Qwest Communications  
5 Corporation.

6 A. Yes. Qwest Communications Corporation, or QCC,  
7 is a wholly owned subsidiary of Qwest Services  
8 Corporation. And Qwest Services Corporation is a  
9 wholly owned subsidiary of Qwest Communications  
10 International, Incorporated, also sometimes called  
11 QCII.

12 QSC, Qwest Services Corporation, also owns  
13 Qwest Corporation, which is the ILEC doing business in  
14 the 14-state region and here in Arizona as well.

15 Q. Ms. LaFave, what services has the Arizona  
16 Corporation Commission previously authorized QCC to  
17 provide in this state?

18 A. QCC has been authorized to provide long  
19 distance facilities-based services in the state of  
20 Arizona.

21 Q. And what is the purpose of today's application?

22 A. The purpose of today's application is to expand  
23 that authority to include offering of local services on  
24 a facilities-based and resold basis, as well as resold  
25 long distance services.

9 (Pages 30 to 33)



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1 Q. Okay. Ms. LaFave, is QCC authorized to provide  
2 services as a CLEC elsewhere in the Qwest Corporation  
3 14-state service area?

4 A. Yes. As a result of regulatory proceedings in  
5 the other 13 states, QCC has been certificated and  
6 authorized to conduct business in all of the other  
7 states. And, most importantly, operating in all 13 of  
8 those states throughout the QC certificated -- QC, the  
9 ILEC, certificated operating area.

10 There are a couple of instances where  
11 limitations were put on QCC's scope of operation in  
12 terms of geographic area; however, those limitations  
13 applied solely to QCC's ability to operate in a  
14 nonaffiliated, meaning non-QC, area, an unrelated  
15 independent telco. And there were no limitations  
16 placed on QCC's ability to compete within QC, the  
17 ILEC's, operating areas.

18 Q. Ms. LaFave, we talked briefly about what  
19 services QCC intends to offer in Arizona in terms of  
20 statewide long distance and local exchange services to  
21 enterprise customers within the QC service territory  
22 and to everyone outside the QC service territory.

23 How will QCC provide those services?

24 A. QCC will be providing those services using  
25 either resold services, finished services, or by

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1 purchasing UNEs. QCC has opted into the SGAT, so it  
2 has an interconnection agreement with QC, the ILEC,  
3 which has been approved, I think, by this Commission,  
4 or by operation of law, at least, in, I believe,  
5 December of last year.

6 Q. Ms. LaFave, will QCC maintain tariffs and price  
7 lists covering the products and services it offers in  
8 Arizona consistent with the requirements that apply to  
9 other CLECs?

10 A. Yes. For any regulated offerings that it makes  
11 in the state of Arizona, it will file the appropriate  
12 price list or tariff. It obviously won't for any  
13 services that may be deregulated or are currently  
14 deregulated.

15 Q. What customer segment does QCC initially intend  
16 to target in the state of Arizona?

17 A. Initially, the customer segment is that -- it's  
18 what we call the enterprise market, which has been  
19 identified as business customers having four or more  
20 lines.

21 And oftentimes what we will find is that these  
22 customers have multiple locations and very often have a  
23 national footprint. So that while they may have  
24 offices in Arizona, they also may have offices in  
25 California, Colorado, and Washington, D.C., for

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1 example.

2 And in those instances, as we have previously  
3 discussed or touched on, the customer truly is looking  
4 for what we kind of generically call one-stop shopping.  
5 They want a single entity with which they can do  
6 business for the provision of all of their  
7 telecommunications needs, whether that is local dial  
8 tone, whether it is ATM and framed data products, long  
9 distance, dedicated Internet access.

10 You take that whole suite of products that are  
11 telecommunications-based, and they want a single  
12 provider with a single point of contact. And, more  
13 particularly, a single bill.

14 Given the restrictions currently, driven  
15 principally by Section 272 that limits the scope of the  
16 business that QC can be in, particularly as relates to  
17 long distance and interLATA services, the Qwest entity  
18 cannot offer one-stop shopping and a single point of  
19 contact and single bill, unless a single Qwest entity  
20 -- in this instance QCC -- has the authority to provide  
21 both long distance as well as local services.

22 Q. Is it common, Ms. LaFave, in dealing with large  
23 businesses, and large businesses including, for  
24 example, government entities, to find that those  
25 entities do business by issuing RFPs or requests for

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1 proposal that require the respondent to provide a whole  
2 set of services in order to qualify to respond to the  
3 proposal?

4 A. Correct. That attribute of an RFP saying as a  
5 qualification you must offer all of the requested  
6 services through a single entity with a single point of  
7 contact and a single bill is becoming more and more  
8 commonplace in RFPs that are issued.

9 And a classic example is, for example, Mutual  
10 of Omaha that has headquarters in Omaha, Nebraska, but  
11 also has offices throughout the United States. The  
12 requirement of a single point of contact and a single  
13 provider and a single bill was one of the essential  
14 qualifications. Despite that, QC and QCC together made  
15 an offer and were knocked out of the bidding process in  
16 round one.

17 Taking that example to a local basis, Arizona  
18 Public Services Corporation had a similar RFP that it  
19 issued recently, and again had the qualification that  
20 they wanted a full suite of services, local and long  
21 distance, and that there be a single provider with a  
22 single point of contact and single bill. And QC, the  
23 Qwest family of companies again were disqualified from  
24 that bidding process.

25 Q. Would you please briefly describe QCC's

10 (Pages 34 to 37)



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1 technical, managerial, and financial qualifications to  
2 provide resold long distance service and CLEC service  
3 in Arizona.

4 A. Right. Qwest Corporation, and QCC more  
5 particularly now, have a long legacy of being part of  
6 the former Bell systems I mentioned earlier. So there  
7 is at least 100 years of combined service and expertise  
8 in the telecommunications area.

9 In Arizona, for example, with the former  
10 Mountain Bell that then operated broadly as U S WEST,  
11 at the merger what was brought into all of the local  
12 and data expertise that U S WEST had was Qwest's  
13 backbone services and their whole long distance and  
14 Internet-related national backbone. So together  
15 there's a long legacy of having experience in the  
16 telecommunications industry across the broad scope of  
17 services.

18 In addition, as to the financial wherewithal of  
19 this company, QCII, or Qwest Communications  
20 International, the holding company, is ranked in the  
21 Fortune 100, and it will put its financial wherewithal  
22 behind all of its operating entities, including QCC.

23 Q. Ms. LaFave, have you reviewed what Staff's  
24 supplemental report, which I believe has been marked as  
25 Exhibit S-2?

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1 A. I have. I don't have it in front of me.

2 Q. Let me do that first. Let me cover one other  
3 thing first before I ask you about that report.

4 Do you have in front of you what have been  
5 marked as Applicant's Exhibits 5 and 6, Ms. LaFave?

6 A. Yes, I do.

7 Q. Could you identify those for the record,  
8 please?

9 A. Yes. Exhibit A-5 is Staff's letter of  
10 administrative completeness informing us that we have  
11 met the requirements set forth in the Arizona  
12 Administrative Code, R14-2-1103.

13 And Exhibit A-6 is our notice that we had filed  
14 notice of this proceeding in the Arizona Republic on  
15 February 11, and attached to that is the actual filing  
16 that was set forth or published in the Arizona  
17 newspaper.

18 MR. BERG: We move Applicant's Exhibits A-5  
19 and A-6.

20 MS. SCOTT: No objection, Your Honor.

21 ALJ WOLFE: A-5 and A-6 are admitted.

22 Q. (BY MR. BERG) Let me take you back to Staff's  
23 supplemental report, which is Exhibit S-2. And thank  
24 you for reminding me about A-5 and A-6.

25 Ms. LaFave, what is your understanding of what

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1 Staff has recommended in its supplement, Exhibit S-2?

2 A. What I believe that they have recommended is  
3 that they have agreed that we should be permitted --  
4 that QCC should be permitted to offer resold long  
5 distance, as well as resold and facilities-based local  
6 services in -- and let's focus first on within QC's  
7 footprint. That such offerings would be limited to  
8 enterprise customers defined as having four lines or  
9 more.

10 Q. And does that limitation apply to both resold  
11 long distance or just to the local exchange services  
12 that are provided within the QC territory?

13 A. It's my understanding that that limitation  
14 applies to local services only.

15 Q. Proceed. I'm sorry. I didn't mean to  
16 interrupt you.

17 A. And as outlined in paragraph Roman numeral 3,  
18 they have said that in that regard, they are proposing  
19 that there be additional qualifications or conditions  
20 placed on such an offering.

21 Q. Before we get to their conditions, what do you  
22 understand Staff's recommendation to be with respect to  
23 the provision of resold long distance services and  
24 resold and facilities-based local exchange services  
25 outside of the QC territory?

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1 A. It is my understanding that there are no  
2 limitations on that other than those that exist by  
3 reason of statute, in the example, for instance, that a  
4 small independent company has a rural exemption as  
5 defined in the 1996 Act. And in that case, that would  
6 control our ability to go in and at least ask for the  
7 ability to have access to their network.

8 Q. And do you understand, Ms. LaFave, that in  
9 Staff's original report, which was filed in February  
10 when they recommended that Qwest be given essentially  
11 unrestricted authority to provide service outside QC's  
12 serving territory, that Staff had a series of  
13 recommendations contained in that report?

14 A. Yes.

15 Q. And to your understanding, except to the extent  
16 that those recommendations related to the provision of  
17 service in the QC service territory, which  
18 recommendations have been replaced by Staff's  
19 supplemental report, is Qwest agreeable to the  
20 conditions contained in Staff's original report?

21 A. Yes. With the exception of -- I think it was  
22 Paragraph 19 that focused on the scope of where we  
23 could operate. We were agreeable to the other terms,  
24 yes.

25 Q. Now let's go back to S-2. It's your

11 (Pages 38 to 41)

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1 understanding that in S-2 that Staff has recommended  
2 that Qwest be permitted to provide local exchange  
3 service to enterprise customers in the QC service  
4 territory.  
5 Is that recommendation subject to certain  
6 conditions or recommendations contained in the Staff  
7 Report?  
8 A. Yes.  
9 Q. And what is Qwest's position with respect to  
10 those recommendations. Ms. LaFave?  
11 A. You want me just to go through them?  
12 Q. If you would, please.  
13 A. Sure. We agree with the recommendation set  
14 forth in subparagraph 1. It has three subparts, a., b.  
15 and c. With respect to Paragraph 2, I think it may be  
16 a question of simply wordsmithing. And, again, it goes  
17 in part to the fact that QC is not a party to this.  
18 But certainly we would be supportive of  
19 acknowledgement that a grant of a Certificate of  
20 Convenience and Necessity to QCC and the scope that we  
21 are seeking currently would not affect QC's current  
22 obligations as an ILEC.  
23 With respect to Paragraph 3, we do not agree  
24 with this provision, principally because we think it's  
25 no longer within the scope of our application as it

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1 currently is stated. We are asking solely for  
2 permission to enter the enterprise market defined as  
3 four lines or more. And so this truly should not have  
4 any impact on that. It has no bearing in this current  
5 proceeding.  
6 The same is true with respect to paragraph  
7 number 4. It is not relevant given the revised scope  
8 of our request.  
9 Q. With respect to paragraph number 4, it's QCC's  
10 position that it's not relevant, but does QC have any  
11 objection to -- well, never mind. Strike the question.  
12 Let's go on to paragraph number 5.  
13 A. Okay. Again, it may be more wordsmithing here,  
14 but, again, we would be fine with an order that  
15 acknowledges that grant of this -- of our request for  
16 authority to do business would not in any way impact  
17 QC's obligation to fulfill its requirements under  
18 Section 251 of the 1996 Act.  
19 Q. Ms. LaFave, let me stop you for a second and  
20 take you back to number 4. I think I can hone my  
21 question better than I did before.  
22 Obviously, to the extent that Condition No. 4  
23 repeats the 24-month restriction that's contained in  
24 Condition No. 3, Qwest's position is the same. But  
25 this also contains a provision that the Commission's

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1 findings and rulings in this case with respect to the  
2 enterprise market shouldn't be used or construed as  
3 precedent in any subsequent Staff recommendation or  
4 order on any subsequent Qwest application.  
5 What is Qwest's position on that portion of  
6 Recommendation No. 4?  
7 A. We do not agree with that particular provision.  
8 Q. Does Qwest have any problem with a condition  
9 that simply says any subsequent QCC application would  
10 be reviewed on its own merits at the time it's filed?  
11 A. No.  
12 Q. Let me take you back to number 6 then. I think  
13 that's where you were in going through the list.  
14 A. With respect to 6, again, we would be fine  
15 stating on the record that grant of QCC's request would  
16 not alter in any way QCC and QC's obligation to adhere  
17 to the terms of Section 272 of the Act.  
18 Q. Okay. Number 7.  
19 A. Number 7 we are okay, because we believe that  
20 this is just restating a right, in essence, that the  
21 Commission already has today. That from time to time,  
22 in carrying out its duties under the Arizona statutes,  
23 et cetera, it may request various certified telecom  
24 providers to provide information.  
25 Q. Okay. How about number 8?

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1 A. Number 8. QCC has no problem with respect to  
2 the request set forth in Paragraph 8.a., subparagraphs  
3 numbers 1 and 2. QCC is fine making those reports.  
4 It does not -- we do not agree, however, that  
5 the provisions of Paragraph 8, subparagraph b., putting  
6 a reporting obligation on QC who is not a party to  
7 this, is appropriate in any way or really has any  
8 bearing on our request for certificate to do business  
9 in the state of Arizona.  
10 Q. How about Recommendation No. 9?  
11 A. Recommendation No. 9, to the extent we're  
12 talking about the information in 8.a., then it's my  
13 understanding that as long as we abide by -- or the  
14 Commission Staff, et cetera, abides by any applicable  
15 protective orders, et cetera, that they can use the  
16 information as they see fit.  
17 We would not agree with the fact that they can  
18 call out and specify an AFOR proceeding.  
19 ALJ WOLFE: Ms. LaFave, could you tell me what  
20 AFOR stands for?  
21 THE WITNESS: Alternative form of regulation.  
22 ALJ WOLFE: Thank you.  
23 THE WITNESS: So instead of being straight rate  
24 of return, it's more negotiated.  
25 ALJ WOLFE: Thank you. Sorry for the

12 (Pages 42 to 45)

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1 interruption.  
2 Q. (BY MR. BERG) How about Staff Recommendation  
3 No. 10?  
4 A. Staff Recommendation No. 10, I think what we're  
5 trying to get at -- and so I would restate it. With  
6 respect to any future proceedings that talk about the  
7 state of competition in the Arizona telecommunications  
8 market, we would be okay with saying that.  
9 QCC's customers would not be counted as an  
10 example of the competitive nature. We would rely on  
11 unaffiliated competitors, be they wireless or wireline-  
12 based competitors, to demonstrate the nature of the  
13 competitive market.  
14 Q. How about Recommendation No. 11?  
15 A. Recommendation No. 11 we would agree with  
16 because I see that as simply restating that the rural  
17 exemption will continue to apply.  
18 Q. And Recommendation No. 12?  
19 A. We're fine with that.  
20 Q. Thank you. Ms. LaFave, do you have any  
21 concluding comments you would like to make with respect  
22 to Qwest's application?  
23 A. Simply that as has been demonstrated, and as I  
24 understand it from earlier opening comments, the fact  
25 that QCC has the technical, financial, and managerial

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1 expertise is not contested, and that it is in the  
2 public interest that our grant be accepted for both the  
3 provision of resold long distance throughout the state  
4 -- resold long distance, local and -- local resold and  
5 facilities-based throughout the state, and within the  
6 Qwest territory for resold and facilities-based local  
7 services for enterprise customers as defined by four  
8 lines and above.  
9 MR. BERG: Thank you.  
10 Ms. LaFave is available for cross-examination.  
11 ALJ WOLFE: Thank you.  
12 Ms. Scott?  
13 MS. SCOTT: Thank you.  
14  
15 CROSS-EXAMINATION  
16  
17 Q. (BY MS. SCOTT) Good morning, Ms. LaFave.  
18 A. Good morning.  
19 Q. Just to recap a little bit of the discussion  
20 with your counsel, Mr. Berg, Qwest has submitted an  
21 amendment to its application which would restrict your  
22 scope of authority to enterprise customers for the  
23 provision of local resold and facilities-based local  
24 exchange service within QC's service territory; is that  
25 correct?

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1 A. That's correct.  
2 Q. And some of the problems that you have  
3 identified in response to questions by Mr. Berg  
4 regarding enterprise customers and Qwest's inability to  
5 compete for those customers in the past would be  
6 rectified if Staff's supplemental report were adopted;  
7 is that correct?  
8 A. If the provisions of the supplemental report  
9 allowing us to compete for the enterprise market were  
10 granted, yes, that would enable QCC to compete for  
11 customers that it can't today.  
12 Q. Okay. Thank you. On page -- let's see here if  
13 I can find the page. Well, item A-18 of your original  
14 application, do you have that before you?  
15 A. Was that Exhibit A-1?  
16 Q. Yes.  
17 A. I have it in front of me. Let me -- yes.  
18 Q. Okay. And in response to A-18 of the  
19 application, you have listed the states in the Qwest  
20 footprint, so to speak, that have authorized QCC to  
21 operate as a CLEC; correct?  
22 A. Correct. And I apologize if we didn't amend  
23 that. Because it should be further updated to reflect  
24 that in addition to the states set forth in A-18, we  
25 have also received approval in North Dakota and South

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1 Dakota, Nebraska, and Iowa, which I think should bring  
2 the total to 13 states.  
3 ALJ WOLFE: Ms. LaFave, Nebraska and New Mexico  
4 or --  
5 THE WITNESS: Nebraska, New Mexico, South  
6 Dakota, North Dakota.  
7 ALJ WOLFE: Okay. Not Iowa.  
8 THE WITNESS: We have Iowa. Oh, Iowa is  
9 already listed. Sorry.  
10 ALJ WOLFE: Thank you for the clarification.  
11 Q. (BY MS. SCOTT) Now, was QCC's authority in  
12 each of these states as a result of regulatory  
13 proceedings, or in some states was it just a matter of  
14 a formal filing or notification to the Commission?  
15 A. There certainly was an official grant of  
16 authority in every one of the proceedings. Honestly, I  
17 have only testified in hearings in Iowa and Nebraska.  
18 Q. Okay. And I think in response to a question by  
19 Mr. Berg, you stated that there were no limitations on  
20 the scope of QCC's authority in these other states,  
21 except in non-QC areas; is that correct?  
22 A. Correct.  
23 Q. Was it always that way in all of these states?  
24 A. In Nebraska, for example, there has been an  
25 order that was issued in the -- it was like 1839 --

13 (Pages 46 to 49)

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1 that wasn't the year it was issued. It was order  
2 number 1839 that limited not just Qwest or its  
3 predecessor company U S WEST, but it limited any entity  
4 that had CLEC operations as well as ILEC. It put  
5 certain conditions on the nature of the customers and  
6 where they were located in terms of competing for them.

7 As a result of a hearing in Nebraska, the  
8 Commission invited us to seek to have that particular  
9 order eliminated because of the change and how much  
10 more competitive the market had become since the  
11 initial issuance of that.

12 That order was ultimately revoked, and there's  
13 a hearing today in Nebraska that will address whether  
14 there will be any conditions put not only on Qwest and  
15 QC and QCC, but as well as other ILECs, CLECs. And I  
16 believe that they are looking at imposing two  
17 conditions on such companies. That they file  
18 agreements of transactions between the two of them, and  
19 that on an annual basis they report the number of  
20 resold local access lines.

21 Q. And the proceeding that you just referred to,  
22 can you give me a case caption for that proceeding and  
23 a docket number?

24 A. I can't off the top of my head, but we can  
25 certainly get that information to you.

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1 MR. BERG: We would be happy to provide that  
2 for you, Maureen. I don't think any of us has it off  
3 the top of our head.

4 MS. SCOTT: Thank you, Tim.

5 Q. (BY MS. SCOTT) The later proceeding that you  
6 just referenced, was that a follow-up proceeding to  
7 QCC's renewed application before that Commission or  
8 renewed filing for expanded authority?

9 A. The subsequent -- they granted QCC's authority  
10 to do business and to offer -- operate as a CLEC within  
11 the state of Nebraska. The subsequent proceeding was a  
12 generic one to say, given market conditions, should we  
13 rescind the order, the 1839 or whatever the number of  
14 the order was, that put limitations on all ICOs,  
15 independent, and just telcos that also had competitive  
16 local exchange carriers as affiliates. So it was a  
17 generic proceeding to eliminate the requirements set  
18 forth in that earlier order.

19 Q. And under the requirements of the earlier  
20 order -- please correct me if my understanding is  
21 inaccurate. But under those requirements, QCC was  
22 limited to providing competitive local service to  
23 multi-location business customers; is that correct?

24 A. Yes.

25 Q. And how long was order 1839 in effect?

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1 A. You know, I can't -- I'll get you a more  
2 precise date, but I know that it was implemented in the  
3 1990s.

4 Q. Okay. And when did the order go into effect  
5 which did away with that restriction for QCC in the  
6 state of Nebraska?

7 A. It would have been this year. And I can get  
8 you the precise date, the effective date of the order.  
9 I don't know that off the top of my head.

10 Q. Okay. And was that in the last proceeding that  
11 you were -- or was that in the proceeding that you were  
12 referencing earlier about the generic proceeding?

13 A. Yes.

14 Q. Okay. With respect to Staff's initial report,  
15 which will be marked as S-1, I believe you stated in  
16 response to a question from Mr. Berg that QCC was  
17 willing or QCC agreed to all of the Staff  
18 recommendations contained in items 6.1 and 6.2, except  
19 for Paragraph 19 of 6.1; is that correct?

20 A. It would be helpful if I could just see the  
21 document. Because what I remember is a whole list of  
22 conditions, and I don't remember the one that -- thank  
23 you.

24 MS. SCOTT: Thank you, Tim.

25 THE WITNESS: Yes.

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1 Q. (BY MS. SCOTT) Then going to what will be  
2 marked as Exhibit S-2, do you have a copy of that?  
3 Staff's supplemental report?

4 A. Yes, I do.

5 Q. Okay. I believe Mr. Berg took you through the  
6 additional Staff recommendations contained on Pages 6  
7 through 9 of that document, if the Commission approved  
8 QCC's supplement to its application, which would limit  
9 the scope of its provision of service within QC's  
10 service territory; correct?

11 A. Correct.

12 Q. And it's my understanding based upon Mr. Berg's  
13 comments and your remarks -- and, again, please correct  
14 me if you feel this is not accurate -- that Qwest  
15 essentially agrees with all of the Staff  
16 recommendations or conditions in the supplemental  
17 report, except item 3, and the same time period that's  
18 carried forward into item 4, and then the reporting  
19 requirements of item 8.b. And there is some concern  
20 about 9, which I think can be resolved, but please tell  
21 me if you agree with that.

22 A. Yes, with one clarification. And that was that  
23 with respect to several of the other paragraphs, there  
24 was concern about how it was worded, but not  
25 conceptually with acknowledging being subject to QC

14 (Pages 50 to 53)

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1 having ILEC obligations and adherence to 272.  
2 Q. So are you referencing, then, Paragraphs 5  
3 and 6?  
4 A. And 2.  
5 Q. Okay. Let me ask you something regarding item  
6 number 6. I think maybe we can clear up any language  
7 disputes.  
8 Is it QCC's position that -- and, again, I  
9 understand that you're an attorney but you're not  
10 testifying in a legal capacity today.  
11 A. Correct.  
12 Q. So if you feel that any of these issues go into  
13 legal areas that you feel are most appropriately  
14 addressed by counsel in briefs, please just state that.  
15 A. Uh-huh.  
16 Q. With respect to item number 6, is it QCC's  
17 position that it must adhere to all 272 requirements  
18 with respect to not only the provision of long distance  
19 service or interLATA service, but also the provision of  
20 local service?  
21 A. It is my understanding that in at least one  
22 order, the FCC in construing Section 272 made it clear  
23 that those provisions apply to relationships between  
24 the 272 affiliate, in our case the QCC entity, and its  
25 ILEC affiliate, in this case QC, that that applies to

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1 any and all transactions between them whether or not it  
2 relates to the provision of local services or long  
3 distance.  
4 Q. Okay.  
5 A. So I think I'm agreeing with you.  
6 Q. Okay. Thank you. And Ms. LaFave, could you  
7 please elaborate a little bit on your concern with the  
8 wording of number 5?  
9 A. The issue is simply that QC is not a party to  
10 this proceeding. And so to put an obligation in an  
11 order, put an obligation on QC who is not a party to  
12 this, I think doesn't feel right is the simplest way.  
13 But certainly what we're willing to state is  
14 that we acknowledge that in no way should a grant of  
15 QCC's request for authority to do business have any  
16 impact on QC's obligation under Section 251 of the Act.  
17 Q. Okay. With respect to -- let's look at QC and  
18 QCC for a moment. Can you please explain for us how  
19 employee time is allocated between, for instance, QC  
20 and QCC? And let me be a little more direct and give  
21 you a little more context for the question.  
22 Do the same employees work for QC and QCC on  
23 matters, and then does Qwest allocate their time  
24 accordingly?  
25 A. Number one, how affiliate transactions are

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1 handled will be governed by Part 32 of the FCC rules.  
2 And whether or not you have to affiliate bill your time  
3 is a function of, number one, who your employer is  
4 within the Qwest family of companies; and then, number  
5 two, for whom or what entity you are providing your  
6 services.  
7 So let's say, for example, that you have got a  
8 QC ILEC employee who is doing some form of business for  
9 an affiliated entity. If that is not a matter of  
10 course for that individual, then they would  
11 affirmatively report their time and just say, I spent  
12 two hours working on this, and then that would go  
13 through and get recorded on the books under the  
14 affiliate transaction using the appropriate labor  
15 rates.  
16 Q. Okay.  
17 A. Does that help?  
18 Q. I appreciate that response. Yes, that helps.  
19 But it would not be uncommon, then, if I can  
20 use an example here, Mr. Curtright. It may not be  
21 uncommon for Mr. Curtright to do work for QC and  
22 allocate his time accordingly, and then yet another day  
23 do work for QCC and allocate his time accordingly; is  
24 that correct?  
25 A. Correct. And I believe with the case of

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1 Mr. Curtright, that he's an employee of QSC, the  
2 holding company that owns both QC and QCC. With  
3 respect to employees of QSC, on a monthly basis, they  
4 -- and this includes myself. We get an e-mail that  
5 says, go to this website and tell us what percent of  
6 your time was spent working for the following  
7 corporations. And it may be Qwest Wireless. It may be  
8 QCC, QC, the ILEC.  
9 And then you go through and say, here is the  
10 portion of my time this particular month that I spent.  
11 And then that is taken by the finance people and  
12 recorded on the appropriate books for affiliate  
13 transactions.  
14 Q. Okay. So you may actually have many employees  
15 that work for both companies and allocate their time  
16 accordingly; correct? In accordance with Affiliated  
17 Interest Rules?  
18 A. Yes.  
19 Q. Okay.  
20 A. There are going to be certain restrictions as  
21 it relates to network functions between QC and QCC.  
22 Q. And you do recognize why it would be -- I don't  
23 want to say might. Why it would be very important for  
24 the Commission to have assurances that QCC will adhere  
25 to 47 USC, Section 251, nondiscrimination standards in

15 (Pages 54 to 57)

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1 its dealings with QCC and the CLECs; correct?  
2 A. I understand that QC has nondiscrimination  
3 nation obligations between and among all CLECs and its  
4 affiliated CLEC, yes.

5 Q. And do you understand why assurances that you  
6 will abide by those requirements in this particular  
7 case would be important to the Commission?

8 A. I do. And would also further add that more  
9 likely than not there are already devices, as it were,  
10 in place that address those very concerns.

11 And let's just take with respect to parity.  
12 That when I do -- let's just say on the QC retail side  
13 of the house that I'm provisioning a service, a DS-1,  
14 for example, in the same time frame as I do it for any  
15 CLEC, including QCC. That all gets measured through  
16 the various, I think, PID/PAPs is what we call them,  
17 that were agreed to in the 271 proceedings prior to the  
18 grant of allowing QCC to enter the long distance  
19 market.

20 In addition, in connection with 272, the FCC  
21 conducts biannual audits of all the relationships,  
22 particularly between QCC and QC. We completed one and  
23 we are just starting in to the next one, I believe,  
24 this summer, the biannual audit. So those mechanisms  
25 are clearly in place to address the very concerns that

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1 you have.

2 Lastly, under 272, we have an obligation to  
3 post any and all transactions between the 272 sub,  
4 subsidiary, QCC and QC. So those are available.  
5 Anyone can see what transaction took place, what the  
6 terms were, et cetera, and to seek similar offerings.

7 Q. Okay. So really, then, QCC or QC should have  
8 no objection to item number 5, really, in that it's  
9 stating what you believe you're bound to do.

10 I understand what you're saying with respect to  
11 your feelings that QC is not a party. But in that this  
12 is restating what you feel that your organizations are  
13 bound to do, you would have no objection to it from  
14 that perspective; correct?

15 MR. BERG: Just for the record, I'm going to  
16 object to the form of the question.

17 Ms. LaFave is here as a witness on behalf of  
18 QCC, and, obviously, is qualified to answer the  
19 question of what QCC's position is. To the extent that  
20 Ms. Scott wants her to represent things on behalf of  
21 other organizations, I think that's beyond the scope of  
22 the witness' testimony.

23 MS. SCOTT: Well, I understand what Mr. Berg is  
24 saying, Your Honor, but I don't believe it's beyond the  
25 scope of the issues that have been raised in this

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1 proceeding with respect to affiliate transactions and  
2 assurances that Staff believes the Commission needs in  
3 order to allow this application, even narrowed in  
4 scope, to go forward.

5 ALJ WOLFE: Mr. Berg, were you making your  
6 objection for the record or did you not want your  
7 witness to respond to the question? I wasn't sure  
8 exactly what the form of your objection was.

9 MR. BERG: We just want to make our objection  
10 for the record to make it clear.

11 ALJ WOLFE: Thank you.  
12 You may answer.

13 THE WITNESS: I really go back to my original  
14 position. It's a question of making a binding  
15 statement on a non-party to this action.

16 But there is no question in my mind that we  
17 absolutely affirmatively represent that there will be  
18 no intent whatsoever that a grant of QCC's application  
19 would not in any way affect QC's existing obligations  
20 under Section 251 of the Act, which is  
21 nondiscrimination.

22 Q. (BY MS. SCOTT) Okay. And I appreciate your  
23 response. Just to follow up, you do recognize the  
24 importance to Staff and perhaps the Commission of  
25 getting assurances from QC that it will abide by those

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1 requirements?

2 A. I understand that.

3 Q. Thank you. Let's take a look, then, at 8.b.  
4 And I think that's one of the areas, Ms. LaFave, that  
5 you have identified as having some concerns with; is  
6 that correct?

7 A. Correct.

8 Q. Can you tell me, first of all, whether QCC or  
9 QC are under any reporting obligations in any of the  
10 other states in which you've been granted CLEC  
11 authority?

12 A. I believe, to the best of my knowledge, the  
13 only one that I'm aware of is a requirement that is the  
14 subject of a hearing today in Nebraska where we  
15 anticipate -- and it won't just be QC singled out.  
16 It's any similarly situated ILEC/CLEC in Nebraska.

17 That they will be required to report and file  
18 affiliate transactions between the two of them with the  
19 Commission, and I think that's on an annual basis. And  
20 then, secondly, to report on an annual basis the number  
21 of resold lines, local lines, that the ILEC provides to  
22 the affiliated CLEC.

23 Q. Okay. And when you state that it's a  
24 requirement or a recording obligation that is  
25 applicable to all CLECs operating within their

16 (Pages 58 to 61)

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1 affiliated ILEC area and that Qwest isn't just singled  
2 out, that's because the multi-line business or  
3 multi-line location restriction applied to all CLECs  
4 operating in their ILEC territory in Nebraska; is that  
5 correct?  
6 A. Correct. And that was the restriction that's  
7 been removed. And as they move forward, they will  
8 again have the broad scope of the rule for this new  
9 rule. Correct.  
10 Q. Right. Okay. What about Iowa? Does Iowa have  
11 any proceeding pending looking at reporting  
12 requirements in this instance?  
13 A. Iowa does have a proceeding that is underway.  
14 To the best of my knowledge, there have been no formal  
15 proposals and no orders issued.  
16 Q. Can you give us an idea of some of the  
17 information that they're looking at requiring QC and/or  
18 QCC to provide?  
19 A. I honestly do not know.  
20 Q. Okay. Just bear with me for just one minute.  
21 Let me just review quickly some of the  
22 objections that were lodged as to Staff's  
23 recommendation for the QC reports, if that's okay.  
24 I believe you said that you restricted your  
25 application to the enterprise market, and, therefore,

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1 there's no need for this information; is that correct?  
2 A. Correct.  
3 Q. In your opinion, would some of the information  
4 be helpful if the Commission desired to determine  
5 whether there would be an adverse impact upon QC's  
6 operations?  
7 A. I don't think so. I think one of the problems  
8 here is that there is an inherent assumption that  
9 information that is going -- or services that are going  
10 from QC -- or let me put it a different way.  
11 The business services that QC is able to  
12 capture have come from QC. That isn't necessarily the  
13 case, particularly given when you have talked about how  
14 robustly competitive the business enterprise market is  
15 in Arizona.  
16 The second concern that I think we have -- and  
17 let's just focus on Paragraph b.1. In order to cull  
18 that information, I think the only way we could do it  
19 would be for QC, a QC employee, an ILEC employee to  
20 say, you want to disconnect your five business lines.  
21 where are you going to take them?  
22 Which I think many individuals, including the  
23 FCC, could likely regard as anti-competitive behavior  
24 on the part of QC, because it could be viewed as a  
25 barrier to leaving the ILEC, regardless of what

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1 competitor you're going to seek service from.  
2 Q. So are you saying that when a customer -- when  
3 QC transfers a customer to another service provider,  
4 you don't know who that service provider is?  
5 A. I think the only time we would know who the  
6 service provider is is if they ported their telephone  
7 number.  
8 Q. And would you be porting the telephone numbers  
9 here?  
10 A. It all depends on whether the customer wants  
11 numbers ported. And if they're changing locations,  
12 likely they couldn't port the numbers because of rate  
13 center restrictions. So there are an awful lot of  
14 variables as it relates to having that information.  
15 Q. And when you talk about the competitiveness of  
16 the marketplace as impacting your ability to provide  
17 this data, you do realize that Staff has limited what  
18 it's asking for to accounts that have specifically  
19 moved from QC to QCC; correct?  
20 A. I understand that.  
21 Q. Okay. And in your opinion, it would not be  
22 impossible to track this information even though you  
23 don't do it now?  
24 A. I have concerns of what measures it would take  
25 and whether they would be viewed as anti-competitive if

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1 we had to ask the customer where they're taking their  
2 service.  
3 ALJ WOLFE: Excuse me. But, Ms. LaFave, if QCC  
4 were getting new business, wouldn't they know who they  
5 were taking the business from?  
6 THE WITNESS: QCC would know who they're taking  
7 the business from. This is a QC report. So we are not  
8 objecting to the provisions of Paragraph 8.a.,  
9 subparagraphs 1 and 2 that impose reporting  
10 requirements on QCC. It is when you have this long  
11 list of information that they are putting the burden on  
12 QC. That is our concern.  
13 ALJ WOLFE: Okay. Thank you. Sorry for the  
14 interruption.  
15 MS. SCOTT: Sorry, Your Honor.  
16 Q. (BY MS. SCOTT) So under 8.b.1, 2, and 3, is it  
17 your testimony today that QCC could provide this  
18 information to the Commission Staff?  
19 A. I would think that that would be possible, and  
20 I believe that that is what is contemplated under  
21 Paragraphs 1 and 2 in a. above.  
22 MS. SCOTT: Your Honor, could I have one  
23 moment, please?  
24 ALJ WOLFE: Yes.  
25 MS. SCOTT: Okay. I'm sorry, Your Honor. I'm

17 (Pages 62 to 65)



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1 sorry, Ms. LaFave.  
2 Q. (BY MS. SCOTT) So if QC were to report, QCC  
3 could provide it with some information, could it not?  
4 A. I guess my point is that we should come up with  
5 what are reasonable reports for QCC to make on a  
6 periodic basis to the Commission. And that is what is  
7 contemplated under Paragraph 8.a., subparagraphs 1  
8 and 2. The difference I see is simply that in the  
9 obligation placed on QCC, it's a little bit broader in  
10 scope because you're reporting by number prefix, the  
11 area code, versus down to the wire center.  
12 Q. Right. With respect, though, to b.1, 2, and 3,  
13 it would be your position that together QC and QCC  
14 could provide this information to the Commission;  
15 correct?  
16 A. My position is that QCC can provide and is  
17 willing to provide certain information to the  
18 Commission, and that QC, a non-party to this  
19 proceeding, should not have those obligations imposed  
20 in this proceeding.  
21 Q. Okay. The Commission does have authority,  
22 however, to request information from affiliates;  
23 correct?  
24 A. Correct. And we've talked about how the  
25 Commission has an independent -- regardless of this

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1 proceeding, has the ability to ask of all certified  
2 carriers, whether they're CLECs or ILECs, to provide  
3 certain information from time to time.  
4 Q. Right. And this proceeding, as we discussed  
5 before, is rather unique, is it not, in that the  
6 Commission Staff has not before recommended in the case  
7 of any CLEC that they be allowed to operate within  
8 their affiliated ILEC's service territory?  
9 A. I agree that that has not been ordered before,  
10 but the conditions -- you're comparing, in my opinion,  
11 apples and oranges. Because when you limit QCC's  
12 ability to compete to areas outside of QC's footprint,  
13 you have in essence, particularly given the rural  
14 exemption, you have in essence eliminated QCC's ability  
15 to compete in the state of Arizona as a CLEC.  
16 That is not true when you take a small rural  
17 company that has a CLEC arm and say you can't compete  
18 within your local exchanges, but that leaves them free  
19 to compete with any and all other CLECs throughout all  
20 of QC's territory, including, you know, your key  
21 markets of Flagstaff, Tucson, and Phoenix.  
22 Q. Right. But, Ms. LaFave, what we are  
23 recommending here goes beyond that for QCC because we  
24 are -- the Staff is recommending in its supplemental  
25 report that QCC have the authority to provide

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1 competitive local exchange service for enterprise  
2 customers within QC's service territory; correct?  
3 A. I agree.  
4 Q. And it is true, is it not, that much of the  
5 information requested in 8.b. resides with QC; is that  
6 not correct? Resides with QC rather than QCC?  
7 A. I believe a great deal of that information  
8 resides with QC, yes. And that would be true with  
9 respect to subparagraphs 4 and 5.  
10 Q. Okay. Does wire center information reside with  
11 QC or QCC?  
12 MR. BERG: I'm going to object to the form of  
13 the question. I think it's vague. Without specifying  
14 what information on a wire center basis she's asking  
15 Ms. LaFave about, I don't think you can answer the  
16 question.  
17 MS. SCOTT: I'm sorry, Mr. Berg. That's a good  
18 point. I'm referring to 8.b.1, 2, and 3.  
19 THE WITNESS: Wire centers. I always think of  
20 wire centers in the context of a central office, and  
21 those are owned by QC. So I don't know if that  
22 answered your question or not.  
23 Q. (BY MS. SCOTT) Thank you. Another question on  
24 the reporting requirements. Is my understanding  
25 correct that you're not necessarily opposed to

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1 providing this information to the Staff, it's just that  
2 you -- that the company believes that since QC is not  
3 technically a party to this case, we shouldn't be  
4 imposing requirements on it?  
5 A. I think that may have overstated what I was  
6 stating.  
7 Q. Okay.  
8 A. Certainly we do not object to QCC providing  
9 certain information, and we've currently agreed as set  
10 forth in Paragraphs 1 and 2. Secondly, I think there  
11 are some strong concerns, as we have discussed before,  
12 about it making -- imposing in this proceeding  
13 reporting requirements on QC.  
14 The second thing is when this gets filed and  
15 what it really means -- because a snapshot of what  
16 customer you acquired, what revenue stream, is only  
17 good for that moment in time.  
18 So let's just say we say as of March 31st, here  
19 is how many business customers QCC acquired that they  
20 believe came from QC. But then there's no way to then  
21 keep on tracking that to say, did QCC lose that  
22 customer? Where did that customer go to? Did they go  
23 out of business so that the revenues have no effect?  
24 It's just one single snapshot in time that may  
25 not mean anything in a broader context, particularly if

18 (Pages 66 to 69)



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1 you're going to use it subsequently in some subsequent  
2 proceeding.  
3 Q. But isn't it correct that Qwest could qualify  
4 how it's doing the reporting so that the Commission  
5 were aware of whether accounts -- which accounts were  
6 included and which might not have been in a subsequent  
7 reporting period?  
8 A. You say couldn't Qwest do that. Are you  
9 talking QCC?  
10 Q. Or QC.  
11 A. I think that it may be what we're contemplating  
12 here is getting extremely complicated, complex, and  
13 likely is something that could not be done on an  
14 electronic basis. I mean, it just seems like you're --  
15 if you're talking about tracking things over time, that  
16 there is nothing in place that could enable us to do  
17 that. And so we're talking about a fairly big burden  
18 here.  
19 Q. Well, and if you're referring to b.1, 2, and 3,  
20 you know, it seems to me -- and please correct me if  
21 you believe I'm wrong. But it certainly seems to me  
22 that between QC and QCC, reporting on these three items  
23 would not be unduly burdensome.  
24 A. And, again, I'm going to go back and just  
25 reiterate. QCC is agreeable to filing certain reports.

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1 And what you have requested so far is set forth in  
2 subparagraph a.1 and 2. We are amenable to that. We  
3 don't think that that obligation should be imposed in  
4 this proceeding on QC.  
5 Q. With respect to b. --  
6 A. 1, 2, and 3.  
7 Q. Right. And I understand that is your position.  
8 A. Right.  
9 Q. Ms. LaFave, one last question on 8.b.1, 2,  
10 and 3. You can understand how the Commission or the  
11 Staff might benefit from this information in looking at  
12 item 1 under Paragraph 3, can you not?  
13 A. I have to tell you, I mean, I'm not sure. It  
14 would depend on what they're using the information for.  
15 And it goes back to, is successfully winning a  
16 customer, are you using that as evidence of something?  
17 And as we've discussed before, we have all of their  
18 reporting requirements of all affiliate transactions.  
19 We have those in place pursuant to 272. We have the  
20 PID, the PAPs to measure nondiscrimination vis-a-vis  
21 and among all CLECs compared to QC's retail.  
22 So you've got a host of other reporting  
23 currently in place, reporting obligations that should  
24 enable you, the Commission, to determine whether  
25 there's reason to investigate further about potential

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1 discrimination, et cetera.  
2 Q. If I could ask you just a hypothetical, and  
3 then we will move on.  
4 If QC has 20 large business customers today,  
5 and it comes in in the next Qwest AFOR case, the  
6 alternative form of regulation or price cap proceeding,  
7 and it states, gee, you know, we've lost three quarters  
8 of our customers, and we don't have all of this revenue  
9 now, and competition has taken away all of these lines  
10 and all of this revenue from us.  
11 You can understand, can you not, why it might  
12 be relevant if three quarters of the market went to  
13 your affiliate versus an unaffiliated company?  
14 A. I understand that from a hypothetical  
15 standpoint. But it goes back to the discussion that we  
16 were having earlier around what is this information  
17 capturing. Because the information is only going to be  
18 as good as it is on the day that you report it.  
19 And so if I have lost -- let's just say QC  
20 loses a million dollars in revenue. Of that, at some  
21 point in time a portion of that may have gone to QCC,  
22 but that also may have been migrated to SBC or AT&T.  
23 The nature of a competitive market is that individuals,  
24 enterprises, in this instance, have a choice, and they  
25 tend to exercise that choice. So even if QCC is

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1 successful on one day, they may in turn lose that  
2 business to another competitor that's still going to  
3 have the same adverse impact on the revenues that QC at  
4 one time had.  
5 MS. SCOTT: Okay. Let's move on to item 3.  
6 ALJ WOLFE: Ms. Scott, excuse me. But would  
7 this be an appropriate time to take a short morning  
8 break? The court reporter probably needs a break.  
9 So would that be acceptable to you, Mr. Berg?  
10 MR. BERG: That's fine with us.  
11 ALJ WOLFE: We'll take a break for 10 minutes.  
12 (A recess was taken from 11:50 a.m. to  
13 12:01 p.m.)  
14 ALJ WOLFE: Let's go back on the record. You  
15 may proceed, Ms. Scott.  
16 MS. SCOTT: Thank you, Your Honor.  
17 Q. (BY MS. SCOTT) Unfortunately, during the break  
18 I thought of one or two more questions that might put  
19 the reporting obligation or requirements that Staff is  
20 requesting under 8.b.1, 2, and 3 in more context, and  
21 it's just two questions along these lines.  
22 In looking at 8.b.1, 2, and 3, Ms. LaFave, how  
23 many customers would we be talking about today?  
24 A. How many -- I don't understand your question.  
25 Q. How many customers today, local service

19 (Pages 70 to 73)

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1 enterprise customers, have moved from QC to QCC?  
2 A. In the state of Arizona, none.  
3 Q. And that's because you don't have the authority  
4 yet; correct?  
5 A. Correct.  
6 Q. Are we talking about a large volume of  
7 customers here do you think?  
8 A. Whether it's a large volume of customers I  
9 don't think has anything to do with the previous  
10 discussion that we had about the fact that the  
11 information is good only on the day that it is pulled,  
12 and can change considerably as time evolves.  
13 Q. I understand that. But on the date that you  
14 provide the information to the Commission, do you think  
15 that it's likely that you're going to have large  
16 volumes of large business customers being transferred  
17 from QC to QCC to make this obligation unduly  
18 burdensome?  
19 A. As I've said, number one, I have no idea.  
20 That's pure speculation. Number two, we are willing to  
21 make certain reports as have been identified, and we,  
22 QCC, have identified in Section 8.a, subsets 1 and 2.  
23 Q. And the last question that I have is you did  
24 not object to item 10 or Staff Recommendation 10, and  
25 wouldn't you agree that the information contained in

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1 8.b.1, 2, and 3 are relevant to the inquiry posed in  
2 item 10?  
3 A. No. I think they're totally separate.  
4 Q. Okay. Let's move on to Paragraph 3. And I  
5 believe this was the other Staff recommendation that  
6 QCC had a concern with; correct?  
7 A. The 24-month period?  
8 Q. Yes. Is it just the 24-month period,  
9 Ms. LaFave, that QCC has a concern with?  
10 A. No. We have a concern with the whole -- I was  
11 just trying to make sure I had the right Paragraph 3.  
12 So Paragraph 3 on Page 7?  
13 Q. Yes. And let me see if I can summarize your  
14 concerns accurately. You believe it's unnecessary  
15 because your application is now limited in scope to  
16 enterprise customers?  
17 A. Correct.  
18 Q. You don't believe there should be any basis to  
19 restrict the filing of a future application?  
20 A. Correct.  
21 Q. And it does not apply to all CLECs?  
22 A. Correct.  
23 Q. Okay. Let's start out again with the last part  
24 of your objection, and I think we touched on this  
25 before. But just to make clear, you do agree that the

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1 Staff has not ever recommended before and the  
2 Commission has not authorized a CLEC that's affiliated  
3 with the ILEC to provide competitive local exchange  
4 service within the ILEC's service territory; correct?  
5 A. I agree that I'm aware of at least three that I  
6 can think of off the top of my head where you have  
7 limited the affiliated CLEC to outside of their  
8 affiliate's local exchange territory, yes.  
9 Q. Okay. And you're not aware of anywhere we've  
10 allowed it in the past; correct?  
11 A. I'm not aware.  
12 Q. Okay. And you do admit that the original  
13 application you filed here was unlimited in scope;  
14 correct?  
15 A. We asked for authority to provide as it relates  
16 to local services, local and -- I'm sorry --  
17 facilities-based and resold services throughout the  
18 state of Arizona. Yes.  
19 Q. Okay. And it is your position that at some  
20 time you want to come back before the Commission and  
21 file to expand the scope for QCC, is it not?  
22 A. I don't believe I addressed that. And I  
23 believe what I had stated was the application has been  
24 reshaped to limit this particular request solely to  
25 enterprise customers defined as having four or more

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1 lines. I'm not speculating about when and if QCC might  
2 want to expand its authority to encompass customers  
3 beyond that.  
4 Q. So is it your position that QCC does not intend  
5 to file a future application with the Commission to  
6 provide competitive local exchange service in the  
7 residential and small business markets?  
8 A. I don't think that's what I said. What I said  
9 is I don't know of a time certain when they would do  
10 that. That's going to be driven by market conditions  
11 and their own business plans.  
12 As we discussed before, because we're running  
13 into so much discussion and concern as to the broader  
14 scope, then in order to insure that we could really  
15 narrow the scope and the focus of this proceeding, we  
16 agreed and refiled to have this narrow focus that we  
17 had understood you could be amenable to.  
18 Q. Okay. And do you agree that -- let's take a  
19 hypothetical, then, if we may. Do you agree that at  
20 the point in time when QCC does decide that it wants to  
21 provide competitive local exchange service to  
22 residential and small business customers in QC's market  
23 or service territory, do you agree that it would be  
24 beneficial to the Commission to have certain  
25 information to look at?

20 (Pages 74 to 77)

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1 MR. BERG: I'm going to object to the form of  
2 the question. I think with using the term "certain  
3 information," the question is vague and ambiguous.

4 MS. SCOTT: Your Honor, I will qualify the  
5 question.

6 ALJ WOLFE: Thank you.

7 Q. (BY MS. SCOTT) Can you see, Ms. LaFave, where  
8 the information contained in item 3 might be useful to  
9 the Commission and the Staff in making a determination  
10 on a future application?

11 A. I think what information would be useful in any  
12 future proceeding is going to be very much a function  
13 of what the marketplace looks like at that time. What  
14 impact Voice over IP has had on residential and small  
15 business, the continued migration to wireless carriers,  
16 et cetera.

17 So to try to cast in stone now something for  
18 future proceeding that is not necessarily -- we don't  
19 have a firm time frame, I don't think is very  
20 productive.

21 Q. And the point you raised about competitive  
22 market conditions, that, in fact, is identified in  
23 item 3, is it not, as one of the factors that Staff  
24 would like information on?

25 A. My point is that there can be so many changes

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1 interest at that point in time to grant any expanded  
2 certificate of Certificate of Convenience and  
3 Necessity.

4 Q. So is it your testimony that it would not be  
5 helpful to Qwest to know ahead of time that Staff wants  
6 to see data for an 18-month period of time? That's the  
7 question. Would not that be beneficial to Qwest to  
8 know that in advance?

9 A. I don't think necessarily.

10 Q. So is it your testimony that you would prefer  
11 to go to all of the effort and bother of putting  
12 together an application a month after the Commission  
13 enters its order in this case, and then have Staff come  
14 in at that time and say, we will need at least 18  
15 months of data in order to evaluate your application?

16 A. My only point is, is that since we don't know  
17 when and if this is going to happen, that changes may  
18 have taken place in the marketplace itself that may  
19 make this type of request totally irrelevant. That's  
20 the only point I'm trying to make here.

21 And that since this is not within the scope of  
22 our current request, it does not need to be addressed  
23 and does not need to be set down as a condition in this  
24 proceeding.

25 Q. And you can understand, though, where a

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1 that since we are not in this proceeding requesting to  
2 enter the residential and small business market but  
3 rather have limited our focus to the enterprise market,  
4 there is no point and it's beyond the scope, really, of  
5 our request to set future requirements on any changes  
6 in the scope of what we are seeking to do in business  
7 right now.

8 Q. But you originally requested unlimited scope;  
9 correct?

10 A. We did.

11 Q. With respect to the provision of service?

12 A. And we have refiled to limit that scope.

13 Q. Right. But it's not unreasonable of Staff, is  
14 it, to anticipate that you will want to be filing an  
15 expanded CC&N to provide competitive local exchange  
16 service in the residential and small business markets  
17 at some point in the future, and to specify the  
18 information that Staff believes it needs to see for a  
19 period of time that would give Staff enough information  
20 to make its determination?

21 A. And my point is that rather than doing it in  
22 this proceeding, that when and if the company filed to  
23 expand its authority to do business, at that juncture  
24 that there would be a decision made as to what were the  
25 essential elements to show it was in the public

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1 legitimate difference of opinion may occur on this and  
2 where Staff may feel it necessary to have a certain  
3 amount of information available to it to make its  
4 recommendation to the Commission?

5 A. I really am testifying from the perspective of  
6 what QCC believes and perceives. And so in this  
7 instance we do not support, for the reasons we have  
8 discussed, the requests set forth in Paragraph 3.

9 MS. SCOTT okay. Let me ask you a few more  
10 questions, and I'm almost finished.

11 ALJ WOLFE: Take your time. This is the  
12 hearing.

13 Q. (BY MS. SCOTT) I would like to take just a few  
14 Qwest states where, I guess, you have indicated in your  
15 application. And I believe based on your earlier  
16 testimony that we're talking about most of your other  
17 in-region states.

18 Let's take Washington state. When was QCC  
19 certified as a CLEC in Washington state?

20 A. I can't tell you that off the top of my head.  
21 Because it was certified, I know, at one point for the  
22 provision of long distance services, and then went back  
23 and got the CLEC. But I honestly can't remember if  
24 that was pre- or post merger.

25 Q. Okay. And what segments of the market is QCC

21 (Pages 78 to 81)

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1 actually serving in Washington state?  
2 A. Right now, QCC's fundamental business plan is  
3 targeting the enterprise market.  
4 Q. Okay. And let's look at Wyoming. Could you  
5 answer the same questions, please, with respect to  
6 Wyoming.  
7 A. Wyoming's certificate was just approved within  
8 the past 12 months. I can't tell you the precise date  
9 off the top of my head, but we can get that information  
10 for you. And, again, QCC's current business plan is to  
11 target the enterprise markets.  
12 Q. In all of its states?  
13 A. Currently, yes.  
14 Q. And do you know which state QCC first received  
15 authority to operate as a CLEC within its ILEC region?  
16 A. I can't tell you that off the top of my head.  
17 I can certainly find out.  
18 MS. SCOTT: Your Honor, I believe I'm done.  
19 Thank you, Ms. LaFave.  
20 THE WITNESS: Thank you.

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1 EXAMINATION  
2  
3 Q. (BY ALJ WOLFE) Good afternoon, Ms. LaFave.  
4 A. Hello.  
5 Q. You're an employee of Qwest Services  
6 Corporation?  
7 A. Correct.  
8 Q. How much time do you normally spend on Qwest  
9 Corporation business as opposed to Qwest Communications  
10 Corporation business?  
11 A. I actually spend time, generally speaking, on a  
12 month-to-month basis with four separate companies: QC  
13 and QCC, as well as Qwest Wireless and Broadband  
14 Services, Inc.  
15 Q. And what percentage of your time is usually  
16 spent between those four entities?  
17 A. It truly is going to vary, but I would say that  
18 probably I spend a predominant amount of time for QC,  
19 followed by probably then evenly split among QCC, Qwest  
20 Wireless, and BSI. But, again, it's going to depend on  
21 what has been going on in any particular time period.  
22 Q. Understandable. The states listed in Section  
23 A-18 of your application, as amended in the second  
24 supplement, was QC a party to the proceedings in which  
25 QCC was granted authority to provide service similar to

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1 those in this proceeding?  
2 A. QC, the ILEC, was not a party to any of QCC's  
3 requests for CLEC status either in-region or out of  
4 region.  
5 Q. Now, in Nebraska you said that was a generic  
6 protocol. There's a generic proceeding ongoing at this  
7 time?  
8 A. Right. What I said is that we had filed our  
9 request for certification and that it was granted. And  
10 that was followed by a couple of other proceedings, one  
11 to revoke a prior order, and one to figure out what  
12 requirements, reporting-type requirements, would be  
13 posed on all ILECs that had CLEC affiliates.  
14 Q. And so the ILECs were participants in that  
15 proceeding as well as the CLEC affiliates of those  
16 ILECs?  
17 A. You know, QCC was participating, and I don't  
18 know if QC was. And I think Cox may have been another  
19 company participating. And I don't know if Alltel was  
20 or not.  
21 Q. Okay. Do you know if in the proceedings in  
22 Nebraska if there was any prohibition on the CLECs use  
23 of customer proprietary network information, or CPNI,  
24 if the competitive CLEC was prohibited from using CPNI  
25 obtained by the ILEC?

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1 A. That issue did not arise. That generally is  
2 controlled by the FCC in its orders interpreting  
3 Section 222 of the federal act relating to CPNI, which  
4 does not differentiate between and among affiliates  
5 within a single corporate entity, but rather the  
6 limitations on use of CPNI and information focuses on  
7 the services provided and whether they're within the  
8 same bucket or not.  
9 Q. In this case, if QCC were granted the relief  
10 it's requesting, would there be any prohibition by the  
11 FCC against QCC's use of CPNI that is obtained by QC?  
12 A. QCC would be under existing federal rules,  
13 which the FCC took a considerable amount of time really  
14 reflecting on what was the congressional intent and  
15 insuring the rules reflected that.  
16 What they have said is that for services within  
17 the same bucket -- so let's just take local services --  
18 that QCC and QC would have access to that CPNI.  
19 Q. But AT&T would not?  
20 A. AT&T would not. But within the AT&T family of  
21 companies that includes their VoIP providers, long  
22 distance, and their CLEC, they are going to have the  
23 same CPNI rules. So any AT&T entity would have  
24 information to -- the information would run across  
25 affiliates as long as it was in the same bucket, be it

22 (Pages 82 to 85)

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1 local services or advanced services, et cetera.  
2 Q. Okay. Also, in your second supplement --  
3 that's mostly what I'm going to be asking you questions  
4 about. Just some clarifying information.  
5 On Page 2 of Exhibit A-4, can you tell me for  
6 the record what ISDN PRI services are? It's on  
7 Line 15.  
8 A. I'm trying to think what the acronym stands  
9 for. The PRI portion of it stands for primary rate  
10 ISDN. And ISDN is basically a technology that enables  
11 a customer over a single facility to have both data  
12 channels and voice channels.  
13 Q. Thank you. Now, you say that in Section A-17  
14 you have supplemented that in your Exhibit A-4, and the  
15 supplement says that QCC's interconnection agreement  
16 with QC is based on QC's Arizona SGAT.  
17 First of all, for the record, can you define  
18 SGAT?  
19 A. Statement of Generally Available Terms, I  
20 believe. That's subject to check. But that's  
21 basically the list of the services that QC, the ILEC,  
22 will provide to all competitive carriers with whom it  
23 has an interconnection agreement. And you can opt into  
24 the SGAT and make that your interconnection agreement.  
25 Q. Okay. The reason I'm asking a question about

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1 this is because of the wording, "based on QC's Arizona  
2 SGAT. Can you elaborate on what that means that it's  
3 based on it?  
4 A. I believe what that means is that it simply --  
5 QCC used the SGAT as the basis for its interconnection  
6 agreement and may have modified or -- and QC may have  
7 negotiated additional terms. And, if so, the SGAT  
8 would be filed, and it was filed with the Arizona  
9 Commission, and would also be made available to any  
10 other CLECs so that they could opt into those  
11 provisions as well.  
12 Q. So any CLEC that currently has an  
13 interconnection agreement with QC could change their  
14 terms based on the QC/QCC interconnection agreement?  
15 A. That is my understanding. But I believe based  
16 on a fairly recent -- maybe not that recent, but on an  
17 FCC order, that you can no longer pick and choose.  
18 That if you're going to opt into an interconnection  
19 agreement, you need to do it in totality and not pick  
20 your favorite piece parts of it.  
21 Q. So I'm not really familiar with interconnection  
22 agreements and the way that they work. If someone  
23 already has an interconnection agreement with QC and  
24 there's another one filed that they like better, can  
25 they just change their whole agreement to meet the new

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1 one?  
2 A. That is my understanding. They would have to  
3 negotiate that and give QC notice of that, but that is  
4 my understanding, yes.  
5 Q. Do you know whether any other CLEC has the  
6 exact same interconnection agreement with QC as QCC at  
7 this time?  
8 A. I don't know that.  
9 Q. In Section A-9 that you modified in Exhibit  
10 A-4, number 1 under that section says the proposed  
11 rates and charges for each service are included in the  
12 tariff price list.  
13 Do your tariffs include residential rates?  
14 A. Our tariffs are targeted for the business  
15 customer.  
16 Q. So they don't include rates for residential  
17 customers at all?  
18 A. Correct.  
19 Q. Originally when they were filed they did?  
20 A. Our original filing, I don't believe, had  
21 included as broad a tariff filing as we currently have.  
22 Our original tariff filing asked for the full scope to  
23 serve all customers.  
24 Q. But it didn't include specific rates for  
25 residential services?

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1 A. Let me check with -- let me just look at the  
2 tariff that's associated with A-2.  
3 Q. Okay. I suppose what I'm asking is probably  
4 limited to local exchange service based on what you  
5 have limited your application to.  
6 A. Right. And the tariff clearly has -- you know,  
7 talks about 900 services and direct inward dialing PRI,  
8 which clearly are business services that would be  
9 targeted to the business market.  
10 Q. And that would be in keeping with your  
11 statement earlier that QCC is targeting enterprise  
12 markets --  
13 A. Yes.  
14 Q. -- at this time across its service territory?  
15 A. Currently, yes.  
16 Q. Sections A-11 and A-12 of the application, the  
17 way that the questions are worded there, they wouldn't  
18 cover any pending civil suits by QCC competitors that  
19 haven't had a judgment rendered in them, would they?  
20 A. I don't believe so. Because as nearly as I can  
21 tell -- and certainly the answers, I believe, are  
22 framed in terms of regulatory proceedings, be those in  
23 front of a state or federal regulatory commission or  
24 law enforcement agency. So it would not contemplate a  
25 civil lawsuit in a state or federal court.

23 (Pages 86 to 89)

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1 Q. Are you familiar with the civil suit that's  
2 been filed against QCC by American Phone Services based  
3 in Alpharetta, Georgia?

4 A. No.

5 Q. In item A-20 of the application, you list the  
6 names and addresses of alternative providers of the  
7 service that are affiliates of QCC. Go ahead.

8 A. Oh, no. I said correct.

9 Q. Do these entities serve the same customers that  
10 QCC proposes to serve by its application?

11 A. The answer for Qwest Corporation, the answer is  
12 that to the extent that Qwest Corporation in Arizona  
13 today serves customers, enterprise customers with four  
14 lines or more, the answer would be yes.

15 With respect to Qwest Ld Corporation, that is  
16 purely limited to long distance services that QCC  
17 cannot provide today. Qwest Wireless serves both the  
18 residential, small business and business markets with  
19 purely wireless services. It's no longer  
20 facilities-based. It resells Sprint PCS's service.  
21 And US Long Distance Company, I believe, is limited to  
22 the provision of operator services.

23 Q. And how do the rates that QCC is proposing  
24 compare to the rates that QC would be charging for the  
25 similar services?

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1 I know that in Staff's Exhibit C to the  
2 original Staff Report, Staff prepared an exhibit. That  
3 would be Exhibit S-1. I don't know if you still have  
4 that. It's on the very last page of S-1.

5 A. Yeah.

6 Q. There's an Exhibit C. Before you answer that  
7 question, I'll just -- you don't need to answer that  
8 question. I'll ask it again if I need it.

9 Is Exhibit C accurate?

10 A. I didn't put this together. I honestly have  
11 not checked it for accuracy. But we could follow up,  
12 and at least with respect to the rates cited here for  
13 QCC and for Qwest, which I'm assuming is Qwest  
14 Corporation, we could check that with respect to the  
15 existing tariff. I don't have the ability personally  
16 to talk about the rates charged by Sprint, AT&T, and  
17 Cox.

18 Q. Okay. The main reason that I'm asking is  
19 because in the notes to this exhibit it states that the  
20 QCC tariff doesn't include a specific additional line  
21 monthly rate, and that for this exhibit it's assumed to  
22 be equal to the mainline rate.

23 Do you know now whether the additional line  
24 service for QCC will be \$45? Or, if not, how much it  
25 will be?

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1 A. I'm not sure that I understand that footnote,  
2 So let me just look and see what the tariff says.

3 Q. Okay. The reason that I'm asking the question,  
4 I'll explain to you, is because I'm wondering what the  
5 difference in cost to the customer is going to be  
6 between getting service from Qwest and from QCC. And  
7 you can answer that in terms of the one-stop shopping  
8 that QCC is seeking to provide.

9 A. I can't -- here's what I don't know since I  
10 didn't put this exhibit together. What I don't know is  
11 if they are looking purely at the tariffed rate and  
12 have not added in, for example, any type of SLC charge,  
13 universal service. I'm just not sure exactly what this  
14 is representing.

15 Q. All right. Let's just put that aside then.

16 And could you just answer for me what the difference in  
17 rates to a customer would be who chose service from  
18 Qwest Corporation as Qwest Corporation is able to  
19 provide it now, and a customer who chose to get all its  
20 services from QCC? Your target enterprise customer --

21 A. Right.

22 Q. -- is it going to be cheaper for the enterprise  
23 customer to get service from QCC than it currently is  
24 for them to get service from Qwest Corporation?

25 A. And I honestly can't answer that on a

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1 hypothetical basis. Because in part it's going to  
2 depend on what the mix of services is, and oftentimes  
3 what QCC is going to have in its total package is not  
4 something that QC can even offer.

5 And let's just say while QC has an ATM product,  
6 it is limited to within a LATA, and likely QCC would be  
7 selling an ATM service. So just, you know, packet data  
8 that may be throughout the state of Arizona or even on  
9 a national basis.

10 I just can't answer your question as directly  
11 as I think you would like.

12 Q. Okay. That usually happens when you're  
13 shopping for telecommunications services. Okay.

14 D-1 of your amended application here states --  
15 at the very bottom of the box on D-1, there's a  
16 statement that says: QCC will begin to offer  
17 facilities-based local exchange service within the  
18 state of Arizona once it has received certification.

19 Are facilities already in place for QCC to  
20 begin to offer facilities-based local exchange service  
21 to enterprise customers?

22 A. QCC has facilities in place that are part of  
23 its national network, whether that is the long distance  
24 backbone or including certain ATM or frame relay.

25 What they don't have is the local

24 (Pages 90 to 93)

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1 infrastructure that would, for example, take and run a  
2 service from a customer's premises back to one of their  
3 switches or point of presence within the LATA. That is  
4 what they would need to be a obtain from QC, for  
5 example.

6 Q. I'm a little confused. The local line from the  
7 end QC customer back to the switching facilities?

8 A. Uh-huh.

9 Q. You're saying QCC would need to obtain that  
10 from QC?

11 A. From QC. Likely it would do so, depending on  
12 the nature of a service, as an a unbundled network  
13 element or through special access. And if it's special  
14 access, they can purchase that from other competent  
15 competitive carriers such as AT&T as well.

16 Q. Okay. So when you're talking about a  
17 facilities-based service, you're not talking about  
18 going in and putting in new plant?

19 A. What this is talking about is that it would be  
20 able to utilize its existing facilities that QCC  
21 already has for the provision of data services and long  
22 distance, and then it would augment those facilities  
23 and connect those facilities to local facilities that  
24 it might obtain from QC or from another provider.

25 Q. Okay. So they wouldn't necessarily be separate

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1 from QC to reach an end user.

2 Q. Okay. When you do that, is QCC then required  
3 to do the maintenance on that or does it depend on the  
4 terms of the interconnection agreement?

5 A. I believe it -- I honestly can't answer that.

6 I believe it likely depends on the terms of the  
7 interconnection agreement. And whatever QC did for  
8 QCC, it would be doing for other CLECs or make that  
9 available to other CLECs.

10 Q. Okay. How will QCC be funding those last-mile  
11 facilities?

12 A. Through their normal --their business plan is  
13 going to contemplate what expenses they have, and the  
14 expenses are going to be the cost of obtaining  
15 customers, the cost of employees, and the cost of  
16 acquiring kind of the input to enable their service,  
17 whether that is purchasing services or network elements  
18 from QC, or out of region from a Verizon or SBC.

19 Q. Okay. Where will the financing come from?

20 Will QCC be relying on the financial resources of its  
21 parent to finance those facilities?

22 A. Yes.

23 Q. Okay. And how does this differ from the way  
24 that QC finances the funding of the facilities? Do  
25 they also rely on their parent to finance those

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1 and apart from QC facilities, those end-use -- what do  
2 you call it? The last leg? How do you term that?

3 A. The last mile, I think.

4 Q. Yes.

5 A. The local loop. It's just like any other CLEC  
6 that may come in and purchase either a finished service  
7 to connect to the end user and obtain that as a resold  
8 discount, or they might buy an unbundled network  
9 element at wholesale rates and then put their own  
10 services over that.

11 Q. Okay.

12 A. It's just going to depend.

13 Q. All right. When that happens, when QCC does  
14 provide its service to an end-use customer using any of  
15 those modalities, will the ownership of those  
16 facilities be separate and apart from QC facilities?

17 A. When QC obtains either unbundled network  
18 elements or a finished retail service at an avoided  
19 cost discount, they are obtaining those on basically a  
20 month-to-month basis from QC pursuant to the terms of  
21 the interconnection agreement.

22 Q. Okay.

23 A. So that QC will own it, and QCC will be  
24 utilizing it just like today AT&T, the CLEC, may  
25 purchase a local loop, you know, on an unbundled basis

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1 facilities if QC were providing the service?

2 A. You know, I honestly don't know. What I do  
3 know is that within Arizona, for example, to the extent  
4 that QC's assets are regulated, that the Commission  
5 will give guidance in terms of how it recovers its  
6 costs from that.

7 But if you're talking about how does it get its  
8 overall capital costs on a going-forward basis, I can't  
9 answer that. I don't know.

10 Q. For QC?

11 A. For QC.

12 Q. But for QCC?

13 A. It's my understanding that it has the financial  
14 backing of QCCII. Kind of the overall parent will work  
15 out the capital funding issues with its affiliates.

16 Q. I have a question about -- and this is in the  
17 original Staff Report that was filed February 23. It's  
18 been marked as Exhibit S-1.

19 A. Uh-huh.

20 Q. The procedural order issued in this case asked  
21 Staff to report on the status of the federal state  
22 independent audit. And on Page 6 of the Staff Report,  
23 that is addressed.

24 A. Yes.

25 Q. The Staff Report states that Staff docketed the

25 (Pages 94 to 97)



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1 report and gave interested parties an opportunity to  
2 comment on the report, but what did the report say?  
3 There's nothing in here about what the report says, and  
4 maybe you can help me find that out.  
5 A. I certainly can find out. Because this was the  
6 first of the biannual audits, and we're just going to  
7 start another one. And I honestly don't know, as it  
8 relates directly to Arizona, what were any findings.  
9 Q. Okay. What were the findings just in a general  
10 nature? Can you give me a general overview of what the  
11 findings were?  
12 A. To the best of my recollection, overall they  
13 found there was compliance with the requirements of  
14 272. And to the extent that they identified any areas  
15 of concerns, they came up with a plan to address and  
16 correct those.  
17 Q. And the auditors came up with the plan to  
18 address and correct? How exactly did that work?  
19 A. That I don't know.  
20 Q. Okay. I'm going to jump back to your  
21 application, Section A-4, that's attached to Exhibit  
22 A-4. And this refers to the fair value rate base  
23 information that the Commission obtains from all  
24 competitive applicants.  
25 Are you familiar with general ratemaking

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1 principles?  
2 A. At a very high level.  
3 Q. Okay. Just hypothetically, if the rates for  
4 this company were to be set based on its net operating  
5 income as compared to the book value of its plant, can  
6 you estimate what the rate of return would come out to  
7 be?  
8 A. I am not a finance person to give you that kind  
9 of answer. I'm sorry.  
10 Q. Subject to check, would you agree with me that  
11 if you take the net operating income of \$34,523,537  
12 and divide it by the rate base of \$5,856,615, that that  
13 comes out to a rate of return of 589 percent? Would  
14 that surprise you?  
15 A. That would surprise me.  
16 ALJ WOLFE: Those are all the questions that I  
17 have. Do you have any redirect?  
18 MR. BERG: Just a very few.  
19  
20 REDIRECT EXAMINATION  
21  
22 Q. (BY MR. BERG) First question, Ms. LaFave, do  
23 you recognize that ISDN stands for Integrated Services  
24 Digital Network?  
25 A. Yes, I do.

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1 Q. Does that sound correct?  
2 A. Yes. Thank you.  
3 Q. I'm going to refer you to Exhibit S-1, which is  
4 the original Staff Report, I think. It's not yet in  
5 evidence, but we've been talking about it.  
6 A. Yeah.  
7 Q. I'm going to ask you to turn to Page 22 of that  
8 report. This is the February Staff Report.  
9 A. Yes.  
10 Q. I think Ms. Scott asked you a question about  
11 whether the only thing Qwest objected to in this was  
12 Condition No. 19 on the previous page, Page 21.  
13 Do you remember that question?  
14 A. Yes.  
15 Q. And I ask you to take a look at the paragraph  
16 that's numbered 2 about three quarters of the way down  
17 Page 22.  
18 A. Yes.  
19 Q. To the extent that condition incorporate  
20 condition 19, would Qwest also have objected to that  
21 condition if Staff hadn't changed it?  
22 A. Yes.  
23 Q. I want to ask you a few questions, Ms. LaFave,  
24 about some questions Ms. Scott asked you about whether  
25 you understood why Staff was concerned with the

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1 possibility that customers and revenue would migrate  
2 from QC to QCC.  
3 Do you remember that line of questioning?  
4 A. Yes, I do.  
5 Q. Ms. LaFave, do you have at least a general  
6 understanding of kind of how wholesale rates are set  
7 under the Telecommunications Act of 1996?  
8 A. I have an understanding about TELRIC and of  
9 resale at an avoided cost discount.  
10 Q. Thank you. Let's start with resale at an  
11 avoided cost discount. Is it your understanding,  
12 leaving aside the question of whether you agree with  
13 any discount that was set in any particular state such  
14 as Arizona, that the theory of the avoided -- of the  
15 resale discount is that the wholesaler takes the retail  
16 price of the product and discounts it to remove the  
17 additional costs that the wholesaler has that would be  
18 retail costs that the wholesaler would avoid by no  
19 longer being in the retail business? Is that your  
20 understanding of how the avoided cost discount works?  
21 A. Yes.  
22 Q. And, therefore, if a wholesaler were to sell a  
23 finished retail service to a retailer for resale, by  
24 definition, if the discount were set correctly, the  
25 wholesaler would be made whole because the only revenue

26 (Pages 98 to 101)



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1 it would lose would be offset by its avoided costs of  
2 retailing; isn't that correct?  
3 A. Correct.  
4 Q. And, therefore, to the extent that -- again,  
5 assuming that the correct resale discount were set, to  
6 the extent that QC sold a finished retail service to  
7 QCC, or to any other CLEC, for that matter, for resale,  
8 there is no negative financial impact on QC, assuming  
9 that the discount was set correctly.  
10 Is that your understanding?  
11 A. Yes.  
12 Q. Let's talk about UNEs and interconnection.  
13 Again, is it your understanding that the methodology  
14 for setting UNE prices under the -- and UNE means  
15 unbundled network elements.  
16 ALJ WOLFE: That one I know.  
17 MR. BERG: Sorry. We get into jargon, and I  
18 sometimes get going.  
19 Q. (BY MR. BERG) Again, the price that a state  
20 commission is supposed to set for a UNE is supposed to  
21 recover the forward-looking cost of that element?  
22 A. Correct.  
23 Q. And then, again, assuming without agreeing to  
24 it that the Arizona Commission had set the correct  
25 price for Qwest to charge a CLEC for a UNE, then Qwest

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1 would be made whole for its costs of selling that UNE,  
2 and wouldn't be any financially worse off whether it  
3 sold the UNE as a wholesaler or sold the retail service  
4 as a retailer.  
5 Is that your understanding?  
6 A. Yes.  
7 Q. Again, assuming that the UNE price was set  
8 correctly.  
9 A. Correct.  
10 Q. And, again, assuming that the UNE price were  
11 set correctly, it would make no difference to Qwest and  
12 would have no adverse financial impact on -- I'm sorry.  
13 I used Qwest -- on QC, to be precise about this,  
14 whether it sold the UNE to QCC, AT&T, MCI, or some  
15 other CLEC; is that correct?  
16 A. Correct. Because they would all be charged the  
17 same rate.  
18 Q. And, again, in theory at least, QC's costs  
19 would be covered?  
20 A. Correct.  
21 Q. And, therefore, it would be your understanding  
22 that there could be no adverse financial impact arising  
23 from either the sale of a finished service for resale  
24 by QCC or the provision of a UNE to QCC because, again,  
25 assuming that the Commission had set the discount rate

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1 correctly and had set the UNE prices correctly, QC  
2 would be made whole; is that correct?  
3 A. Correct.  
4 Q. Just one more area, and then I'm done.  
5 Ms. LaFave, you testified that QCC intends to  
6 market and target -- I guess was the term I think you  
7 used --enterprise customers.  
8 What are the characteristics of enterprise  
9 customers generally? They're larger telecommunications  
10 customers; is that correct?  
11 A. Yes. And they tend to have multiple locations.  
12 Q. And do they tend to be more sophisticated  
13 customers than, say, a purchaser of 1-FR service?  
14 A. Yes.  
15 Q. And to the extent that affiliates use CPNI to  
16 market to large enterprise customers, do large  
17 enterprise customers understand that -- is that  
18 something they're aware of that that's a general  
19 practice in the industry?  
20 A. I believe so, yes.  
21 Q. And isn't it also true that large enterprise  
22 customers in Arizona and elsewhere have numerous  
23 providers of service to them? They can choose from  
24 both QC, QCC if its certificate were granted, but a  
25 number of CLECs that are unaffiliated with Qwest?

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1 A. Correct.  
2 Q. And if an enterprise customer were unhappy  
3 about CPNI being used by one company to market to it,  
4 it can take its business to another phone company, to  
5 coin a phrase; is that correct?  
6 A. Correct.  
7 MR. BERG: That's all I have.  
8 ALJ WOLFE: Is there any recross on that  
9 redirect?  
10 MS. SCOTT: Your Honor, I just have two quick  
11 items.  
12  
13 RECROSS-EXAMINATION  
14  
15 Q. (BY MS. SCOTT) Ms. LaFave, just very briefly,  
16 Mr. Berg just asked you a series of questions regarding  
17 how UNE rates are set and resale rates. Certainly the  
18 points that were made could be presented to the  
19 Commission in any AFOR proceeding, could they not?  
20 A. About?  
21 Q. About the company not being adversely impacted?  
22 A. Certainly.  
23 MS. SCOTT: Okay. The only other item that I  
24 had, Your Honor, is Staff had submitted to the  
25 Applicant five sets of data requests, and I have the

27 (Pages 102 to 105)

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1 Applicant's responses. I would like to offer these  
2 into evidence if Qwest will stipulate to their  
3 admission.

4 MR. BERG: We have no objection. I think  
5 before we started the hearing, Maureen, you mentioned  
6 that you were also going to put in our data requests to  
7 you and the responses.

8 MS. SCOTT: Yes.

9 MR. BERG: If you're not going to offer those,  
10 I will, but I would just as soon put all of them in.

11 MS. SCOTT: We can do that at this time. Qwest  
12 responses to Staff's data requests are S-4, and Staff's  
13 responses to Qwest's data requests are Exhibit S-3.

14 MR. BERG: And Qwest has no objection to either  
15 S-4 or S-3.

16 ALJ WOLFE: Now, in doing this are you asking  
17 that they be considered in the preparation of a  
18 recommended opinion and order?

19 MS. SCOTT: To the extent that Your Honor would  
20 so desire, yes.

21 ALJ WOLFE: Have they all been addressed in  
22 Staff's analysis that has been filed and that will be  
23 represented by a Staff witness?

24 MS. SCOTT: I believe that many of the issues  
25 have been addressed by a Staff witness or Qwest's

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1 to look through every one of them and come to an  
2 independent opinion. And I don't think the parties are  
3 going to want that to happen actually.

4 I just want to make sure that that's -- I'll  
5 admit them to the record, but they'll just be given  
6 appropriate weight. I don't want you to think that  
7 they'll necessarily be considered.

8 MS. SCOTT: No. That's fine, Your Honor.

9 MR. BERG: That's acceptable to Qwest also,  
10 Your Honor.

11 ALJ WOLFE: All right. Exhibit S-3 and S-4 are  
12 admitted then.

13 (Ms. LaFave was excused as a witness.)

14 ALJ WOLFE: Thank you for your testimony today.  
15 You're excused as a witness.

16 We'll go ahead and break for lunch, and we'll  
17 come back at 2:00 and we'll be in Room 100.

18 (A recess was taken from 12:55 p.m. to  
19 2:05 p.m.)

20 ALJ WOLFE: Back on the record.

21 Mr. Berg, did you have anything further after  
22 that witness?

23 MR. BERG: No. Qwest Communications  
24 Corporation rests.

25 ALJ WOLFE: Thank you.

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1 witness. To the extent they have not been, we would  
2 not mind limiting the use of -- or that use of those  
3 not be made for purposes of the decision in this case.

4 ALJ WOLFE: Okay. Mr. Berg?

5 MR. BERG: We have no objection to that.  
6 Certainly many of these data requests relate to matters  
7 that are no longer in controversy between Qwest and  
8 Staff, so obviously you're not going to have heard any  
9 testimony about them today. So with Ms. Scott's last  
10 understanding, we have no objection.

11 ALJ WOLFE: The issue that I have with it,  
12 Ms. Scott, is that in admitting them to the record of  
13 the proceeding is that it does put those responses at  
14 issue. And if they haven't been dealt with and then  
15 haven't been introduced through the witness, then I  
16 don't know what weight they would be given in a  
17 Commission decision.

18 I just want to make that clear for the record.  
19 If you want them docketed so that someone can go in  
20 there and look at them later, I don't have a problem  
21 with that. But without any analysis by the company or  
22 by Staff of the responses, if it's not included in  
23 docketed filings that are the subject of direct and  
24 cross-examination today, I just want the record to be  
25 clear that I don't feel that I'm necessarily competent

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1 And, Ms. Scott, are you prepared to call your  
2 first witness?

3 MS. SCOTT: Yes, we are, Your Honor. Staff  
4 calls John Bostwick.

5  
6 JOHN BOSTWICK,  
7 called as a witness on behalf of Staff, having been  
8 first duly sworn by the Certified Court Reporter to  
9 speak the whole truth and nothing but the truth, was  
10 examined and testified as follows:

11  
12 DIRECT EXAMINATION

13  
14 Q. (BY MS. SCOTT) Would you please state your  
15 name and business address for the record.

16 A. Yes. John Bostwick. I'm with the Arizona  
17 Corporation Commission located at 1200 West Washington,  
18 Phoenix, Arizona.

19 Q. And what are your responsibilities with the  
20 Commission?

21 A. As an Administrative Service Officer, one of my  
22 responsibilities is to review CC&N applications such as  
23 the one we have before us, and to evaluate the material  
24 submitted and make recommendations as to the acceptance  
25 or rejection of the CC&N.

28 (Pages 106 to 109)

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1 Q. And as part of your responsibilities, did you  
2 review the application of QCC for an extension or  
3 expansion of its existing CC&N to include resold long  
4 distance services and resold and facilities-based local  
5 exchange service?  
6 A. Yes, I did.  
7 Q. And did they also file a petition for a  
8 competitive classification?  
9 A. Yes, they did.  
10 Q. And you reviewed that as well?  
11 A. Yes.  
12 Q. Okay. And did you review subsequent amendments  
13 and supplements by the Applicant to its application?  
14 A. Yes, I did.  
15 Q. I'm handing you what's marked as Exhibit S-1.  
16 Do you recognize that document?  
17 A. Yes, I do.  
18 Q. Were portions of this document prepared under  
19 your direction and control?  
20 A. Yes.  
21 Q. And can you identify for us which portions of  
22 this report that you're responsible for?  
23 A. Yes. If we go to the table of contents, I  
24 would say basically everything, excluding 3.1. There  
25 might be pieces of certain sections, but that and the

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1 recommendations regarding number 19. And I believe  
2 Exhibit C, those were prepared by Mr. Fimbres.  
3 Q. Okay. The portions of the Staff Report that  
4 you're responsible for, do you have any corrections  
5 that you would like to make at this time?  
6 A. Yes. I just have a minor one on Exhibit A.  
7 Down at the bottom where we have the asterisk, it says,  
8 QCC response to Section A-19 in their application. It  
9 should read A-18.  
10 Q. Do you have any other corrections that you  
11 would like to make?  
12 A. Those are the only ones at this time.  
13 Q. Okay. Could you please summarize your findings  
14 and recommendations with respect to the Applicant's  
15 technical and financial capability to provide service  
16 in the state.  
17 A. As far as the technical and financial  
18 capabilities, I found QCC and its parent suitable for  
19 granting them a license to provide the services that  
20 they requested, basically resold local exchange,  
21 facilities-based local exchange, and resold long  
22 distance.  
23 Q. Okay. And did you have an opportunity to  
24 review the Applicant's complaint history in Arizona?  
25 A. In Arizona, I had the opportunity to review the

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1 complaints as I identified them through their  
2 application, and there was one in there. It was not  
3 called attention to in the application itself. It was  
4 submitted with the attachment.  
5 And that's -- basically, I know it exists. I  
6 haven't reviewed it and put it into the report.  
7 Q. Okay. Is there anything else that you would  
8 like to add with respect to your recommendations or the  
9 Applicant's technical and financial capability?  
10 A. The only thing that I would add is that this  
11 report that I have that you -- S-1, Exhibit S-1, was  
12 prepared before we prepared the supplement, which was  
13 dated -- I can't see the date of it. May 13.  
14 Q. Okay. And so this initial Staff Report was  
15 based upon the original application of the Applicant,  
16 and I believe one amendment that Qwest had subsequently  
17 filed, but it did not take into account the Applicant's  
18 supplemental filing limiting the scope of its  
19 application; is that correct?  
20 A. That's correct.  
21 MS. SCOTT: The witness is available for cross.  
22 ALJ WOLFE: Thank you.  
23  
24  
25

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#### CROSS-EXAMINATION

1  
2  
3 Q. (BY MR. BERG) Mr. Bostwick, I'm going to hand  
4 you Exhibit A-4 in evidence. And I've opened it to the  
5 fourth page from the back of the exhibit. Since  
6 they're not numbered, that's the best way I can  
7 describe it.  
8 But the heading at the top says B-4, the  
9 Applicant must provide the following information, and  
10 then it lists five things.  
11 Do you see that, Mr. Bostwick?  
12 A. Yes, I do.  
13 Q. And were you present at the hearing when the  
14 Administrative Law Judge asked Mary LaFave some  
15 questions based on the information provided by Qwest  
16 below those five items?  
17 A. Yes, I was.  
18 Q. Now, Mr. Bostwick, that line of questioning, as  
19 you understood it, went to the amount of return on fair  
20 value rate base that was projected for QCC under the  
21 application; is that correct?  
22 A. That's correct.  
23 Q. Mr. Bostwick, when you look at the projected  
24 total revenue to be generated by the provisions of  
25 these services, that number is 76,497 -- excuse me.

29 (Pages 110 to 113)

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1 Try again. \$76,497,192.  
2 A. That's correct.  
3 Q. Would you go with me to Line 1, the instruction  
4 for providing that information. Do you see it a little  
5 further up the page?  
6 A. Right.  
7 Q. And what it says is: Provide the projected  
8 total revenue expected to be generated by the provision  
9 of telephone services to Arizona customers for the  
10 first 12 months following certification, adjusted to  
11 reflect the maximum rates of which the Applicant has  
12 requested approval. Is that correct?  
13 A. Right.  
14 Q. So this would be the revenue that would be  
15 generated by Qwest if it charged the maximum rates it  
16 has filed; is that correct?  
17 A. That's correct.  
18 Q. Mr. Bostwick, I'm going to ask the court  
19 reporter to mark three more exhibits, and I think this  
20 is A-7, A-8 and A-9.  
21 Mr. Bostwick, I've handed you three documents.  
22 A-7 is a page of Qwest's proposed tariff that reflects  
23 the maximum rates for a business line that would be  
24 provided by QCC.  
25 A. Right.

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1 Q. Is that your understanding?  
2 A. Right.  
3 Q. And then A-8 is a tariff page showing the  
4 proposed rate that Qwest would charge for the same  
5 business line, the actual rate they've charged if you  
6 bought it a la carte by itself. Is that your  
7 understanding?  
8 A. That's my understanding looking at this.  
9 Q. And then A-9 is, again, the actual price Qwest  
10 would charge for the same business line if you bought  
11 it in conjunction with some other things that you  
12 bought?  
13 A. Okay.  
14 Q. It reflects a lower amount. Do you see that,  
15 Mr. Bostwick?  
16 A. Yes.  
17 Q. If you look at the rates for a business line on  
18 A-8 and A-9, isn't it true that they reflect rates that  
19 are about somewhere between 16 percent and 40 percent  
20 of the maximum rate that's reflected on A-7?  
21 And I don't need you to do an exact  
22 calculation. I'm just asking you for sort of a  
23 ballpark.  
24 A. Yeah. Eyeballing it, I would say that's  
25 correct.

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1 Q. Now, taking you back to the application, which  
2 is A-4, Mr. Bostwick, if you took that \$76 million and  
3 you reduced it to reflect actual rates that were, say,  
4 60 percent of that number, then the net revenue that  
5 would be produced would be very small or close to  
6 nothing; isn't that correct?  
7 A. The net revenue, yes.  
8 Q. Because you would subtract the \$41 million and  
9 costs from it?  
10 A. Right.  
11 Q. And if you produced a number of say zero or one  
12 million return on a fair value rate base of almost  
13 \$6 million, you're talking about a return that's  
14 certainly below 100 percent, but, say, down around the  
15 18, 19 percent range.  
16 Does that sound about right, Mr. Bostwick?  
17 A. Well, subject to check. I'm not going to --  
18 yeah.  
19 Q. And I'm not giving you these numbers as exact  
20 numbers because I'm doing the math in my head.  
21 A. Right.  
22 Q. If you go to the rate on A-9, that's about 40  
23 percent of that, 40 percent of the rate on A-7. And if  
24 you took 40 percent of 76 million, that would produce a  
25 number somewhere between, say, 30 and 35 million; is

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1 that correct?  
2 A. Right.  
3 Q. And if you took 35 million in revenues and  
4 subtracted 41 million in expenses from it, it would not  
5 produce a positive return on rate base, would it?  
6 A. No. It would be a negative.  
7 Q. So to the extent that this exhibit suggests  
8 that there could be a return on rate base of 500  
9 percent or something, that's only because the revenues  
10 given were given at the maximum rates as the schedule  
11 called for. It doesn't reflect the return on the  
12 actual rates that Qwest has proposed; is that correct?  
13 A. Right. That's correct.  
14 MR. BERG: Thank you. I have nothing further  
15 for Mr. Bostwick.  
16 ALJ WOLFE: Thank you, Mr. Berg.

EXAMINATION

20 Q. (BY ALJ WOLFE) Good afternoon, Mr. Bostwick.  
21 A. Good afternoon.  
22 Q. You're not sponsoring Exhibit S-2 at all, the  
23 one that I have heard is going to be marked as  
24 Exhibit S-2, the supplemental Staff Report, that was  
25 filed May 13, 2005?

30 (Pages 114 to 117)

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1 A. I'm not really going to address issues on that.  
2 Q. Okay. So can you tell me what Staff's  
3 recommendation is in this proceeding? Are you  
4 qualified to give me that?  
5 ALJ WOLFE: Ms. Scott.  
6 MS. SCOTT: Well, Your Honor, if I could just  
7 clarify, he is sponsoring our recommendations with  
8 respect to the technical and financial capability of  
9 the Applicant to provide service.  
10 Mr. Fimbres will be addressing other aspects of  
11 the report and the recommendations with respect to  
12 QCC's application and supplemental filing. And then  
13 Mr. Abinah will be available to address any policy  
14 questions that Your Honor or Qwest may have.  
15 ALJ WOLFE: Ms. Scott, the reason that I'm  
16 asking this is because I have some questions for  
17 Mr. Bostwick that depend on what Staff's ultimate  
18 recommendation is.  
19 And I'm going to go ahead and refer to  
20 Exhibit S-2 that you have said that has been marked as  
21 Exhibit S-2 and that was docketed on May 13. When I  
22 read through that, I didn't know where do I really see  
23 -- do I see that it says Staff is withdrawing its  
24 recommendations in the original Staff Report, and we  
25 are recommending that this alternative recommendation

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1 be adopted by the Commission.  
2 So in order to ask this witness some questions,  
3 specifically about Affiliated Interest Rule waivers, I  
4 need to know -- I would like to know before I can ask  
5 him. And I can recall him later. You can recall him  
6 later after Mr. Abinah testifies if you like. But I do  
7 have questions for Mr. Bostwick that depend on what  
8 Staff's recommendation is.  
9 MS. SCOTT: I understand that. And I think  
10 that you could pose those questions to Mr. Bostwick.  
11 He is the appropriate witness to answer questions with  
12 respect to that portion of the Staff Report. And I  
13 think he has testified that he is aware of the  
14 supplement that was filed by the company and the  
15 amended or supplemental Staff Report.  
16 ALJ WOLFE: All right. I'll just stay in  
17 suspense until then.  
18 Q. (BY ALJ WOLFE) But for now, Mr. Bostwick, on  
19 Page 7 of Exhibit S-1, in the first full paragraph you  
20 address the Affiliated Interest Rule waiver request.  
21 Not request, but that was -- my procedural order that I  
22 issued in this matter --  
23 A. Right.  
24 Q. -- ordered or directed Staff to provide a  
25 recommendation regarding the Affiliated Interest Rule

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1 waiver.  
2 This paragraph says that since Staff is  
3 recommending that QCC provide competitive resold and  
4 facilities-based local exchange service throughout the  
5 state of Arizona, except areas inside QC's service  
6 territory, Staff believes that the limited waiver does  
7 not need to be revisited.  
8 Now, depending on what Staff's recommendation  
9 is, if Staff's recommendation has changed, how does  
10 that affect the Staff's conclusion here on Page 7?  
11 A. There's been an issue of some policy concern on  
12 that, so I'm going to pass that to Mr. Abinah.  
13 Q. Okay. Very good. Thank you for that.  
14 On Page 3 of the Staff Report in the procedural  
15 outline here, you point out that QC submitted the  
16 interconnection agreement that it entered into with  
17 QCC, and it went into effect by operation of law in  
18 December 20, 2004.  
19 Do you recall that?  
20 A. Where are you at?  
21 Q. The third paragraph down on Page 3 of S-1.  
22 A. Yes. Okay.  
23 Q. Did Staff review that interconnection  
24 agreement?  
25 A. No. I have not seen that interconnection

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1 agreement personally.  
2 Q. Okay. Do you know if it was reviewed by  
3 someone on Staff?  
4 A. My understanding is that all interconnection  
5 agreements are reviewed by another person within the  
6 Corporation Commission. And that review is done by, I  
7 believe, Blessing Chukwu.  
8 Q. Okay. Thank you. And in this section, going  
9 on through this on Page 5, Section 2.6 of your Staff  
10 Report addresses QCC's compliance with Decision  
11 No. 66612.  
12 A. Right.  
13 Q. And the Staff Report states that Staff  
14 ascertained that contracts are posted on Qwest  
15 Corporation's website.  
16 A. Right.  
17 Q. And that Staff reviewed the execution dates of  
18 the contracts.  
19 Did Staff review the content of the contracts?  
20 A. No. Staff reviewed the website to make sure  
21 that -- validate the information, QCC information, was  
22 on the QC website. That was there.  
23 Staff looked at the contracts that were -- a  
24 listing of contracts that were given to Staff by the  
25 compliance section and reviewed them in terms of the

31 (Pages 118 to 121)

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1 date being within 30 days of execution date.  
2 Q. Okay. So Staff wouldn't be able to comment on  
3 whether there were anti-competitive terms in the  
4 contract?  
5 A. Staff did not review it for that aspect of the  
6 contract.  
7 Q. Okay. And on the next page of the Staff  
8 Report, Page 6, the Staff Report states that Staff  
9 docketed and gave the parties an opportunity to comment  
10 on the report of independent accountants that was filed  
11 by Ernst & Young?  
12 A. Right.  
13 Q. What were the general conclusions of the  
14 report?  
15 A. Well, I have copies here, and they're very  
16 thick and in-depth. The best way I can really  
17 summarize it is exactly that, that one sentence that  
18 says compliance with the requirements of Section 272  
19 and dealt with the companies in the various states.  
20 But I -- you know, it's rather voluminous and  
21 numerous findings, but that's the best I could really  
22 come up with.  
23 Q. Now, when Decision No. 66612 --  
24 A. Right.  
25 Q. -- Staff's recommendations in that case were

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1 based upon the fact that there would be a federal/state  
2 joint audit, independent audit. Do you recall that?  
3 A. That was -- yes.  
4 Q. Okay. But Staff didn't review that federal/  
5 state audit in-depth?  
6 A. The only audit I'm familiar with is this, the  
7 one that I have right here, Qwest International.  
8 Q. The federal/state independent audit under  
9 Section 272?  
10 A. That's correct.  
11 Q. Regarding the conclusions and the general  
12 conclusions of that audit, would that be a policy  
13 question that I should address to Mr. Abinah?  
14 A. I would say yes for now.  
15 ALJ WOLFE: Those are all the questions that I  
16 have for you. Thank you for your testimony today.  
17 Do you have any redirect?  
18 MS. SCOTT: No, I don't.  
19 ALJ WOLFE: Okay. Thanks.  
20 (Mr. Bostwick was excused as a witness.)  
21 MS. SCOTT: Staff will call Armando Fimbres.  
22 Could I have one minute, Your Honor?  
23 ALJ WOLFE: Yes.  
24  
25

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1 ARMANDO FIMBRES,  
2 called as a witness on behalf of Staff, having been  
3 first duly sworn by the Certified Court Reporter to  
4 speak the whole truth and nothing but the truth, was  
5 examined and testified as follows:  
6  
7 DIRECT EXAMINATION  
8  
9 Q. (BY MS. SCOTT) Mr. Fimbres, can you please  
10 state your name and perhaps spell it for the court  
11 reporter. And also please state who you are employed  
12 by and in what capacity.  
13 A. Armando Fimbres. A-R-M-A-N-D-O, F-I-M-B-R-E-S.  
14 I'm employed by the Arizona Corporation Commission,  
15 Utility Division.  
16 Q. And in what capacity?  
17 A. I'm specifically telecommunications as a Public  
18 Analyst.  
19 Q. And can you tell us what your background is in  
20 this industry?  
21 A. I've been with the Commission since April of  
22 2004. Previous to that, I was with either Bell System  
23 or what I like to describe as Bell System-derived  
24 companies for 29 years, starting as an engineer, but  
25 with most of that career in various aspects of

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1 planning, market research analysis, strategy  
2 development.  
3 Q. You did work for Qwest Corporation for how many  
4 years?  
5 A. The last year between, let's say, mid-2000 and  
6 May of 2001, I was with Qwest. Starting with Western  
7 Electric, Pacific Northwest Bell, U S WEST, and then  
8 Qwest. Correct.  
9 Q. So you have had a long and distinguished career  
10 in the telecommunications industry?  
11 A. It's been long, yes.  
12 Q. Okay. As part of your responsibilities working  
13 in the Utilities Division of the Commission Staff, did  
14 you have the opportunity to review the application of  
15 QCC Corporation for an expansion of its CC&N to include  
16 authority to provide resold and facilities-based local  
17 service and resold long distance services and its  
18 petition for competitive classification?  
19 A. I did review it. Most of my contribution was  
20 in that latter area.  
21 Q. Okay. And I have placed before you what are  
22 marked as Exhibit S-1 and Exhibit S-2.  
23 Let's start out with Exhibit S-1. Can you  
24 identify that, please.  
25 A. They look like the originals. Is that what

32 (Pages 122 to 125)

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1 you --  
2 Q. Yes. Okay. So that's the initial Staff Report  
3 on Qwest's original application and their first  
4 amendment; is that correct?  
5 A. Yes. Yes.  
6 Q. Okay. And can you identify the areas of the  
7 Staff Report that you're responsible for under S-1?  
8 A. You want the actual pages? My areas had to do  
9 with the areas of service area largely. And then there  
10 was a recommendation at the end. Was it number 19?  
11 Q. So would that be Section 3.1 of the Staff  
12 Report?  
13 A. Yes.  
14 Q. And then in the Recommendations section, item  
15 number 19?  
16 A. Yes. I do remember that.  
17 Q. And how about the exhibits that are attached?  
18 A. Exhibit C, yeah, was -- I put that together.  
19 Q. Okay. Referring you to 3.1, specifically  
20 Page 9. Are there any corrections that you would like  
21 to make to Page 9 at this time?  
22 A. Yes. In the first -- that little paragraph at  
23 the top of Page 9, starting with -- let's see. It's  
24 the second to the last sentence. Some states -- and it  
25 should say -- apparently would not initially. Would

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1 not initially allow such BOC CLEC affiliates to provide  
2 voice service through a custom specific contract within  
3 the BOC ILEC territory until criteria were met.  
4 Q. And was that customer or custom?  
5 A. Probably that missing R. Customer.  
6 Q. Customer. Okay. And did you also want to  
7 correct the footnote down below, Footnote 7 that it  
8 refers to?  
9 A. Footnote 7 where it starts, "Currently as in  
10 Texas," should say: See Texas or T-X-P-U-R-A, 54.102,  
11 comma, 58.051, comma, 58.151, comma, and 58.003.  
12 Q. And was it your intent to strike the portion of  
13 the footnote dealing with the Texas Utility Code and in  
14 its place insert the cites that you just referenced?  
15 A. Yes, that is. Yes. That's correct.  
16 Q. And was there another modification you wanted  
17 to make to Footnote 7?  
18 Well, let me ask you. Footnote 6 refers to the  
19 SBC order; correct?  
20 A. That is correct.  
21 Q. And was its subsequent reference in Footnote 7  
22 in error?  
23 A. That is correct.  
24 Q. Okay. So, actually, the SBC order should have  
25 only been referenced in Footnote 6, and its reference

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1 in Footnote 7 was in error; correct?  
2 A. That's correct.  
3 Q. Are there any other corrections that you would  
4 like to make at this time.  
5 A. No.  
6 MS. SCOTT: Your Honor, we would offer  
7 Exhibit S-1 into evidence at this time.  
8 MR. BERG: No objection.  
9 ALJ WOLFE: S-1 is admitted.  
10 Q. (BY MS. SCOTT) Mr. Fimbres, I'm now placing  
11 before you what's been marked as Exhibit S-2. Are you  
12 familiar with this document?  
13 A. Yes, I am.  
14 Q. And this was prepared under your direction and  
15 control?  
16 A. That's correct. Yes.  
17 Q. Does this Exhibit S-2 address Staff's  
18 recommendations with respect to the Applicant's  
19 limitation on scope? Willingness to put a limitation  
20 on the scope of its application in QC's service area  
21 with respect to the provision of local service?  
22 A. Yes.  
23 Q. Okay. Are there any corrections that you would  
24 like to make to this report at this time?  
25 A. No.

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1 MS. SCOTT: Your Honor, we would offer this  
2 into evidence.  
3 ALJ WOLFE: S-2?  
4 MS. SCOTT: Yes.  
5 MR. BERG: No objection, Your Honor.  
6 ALJ WOLFE: S-2 is admitted.  
7 Q. (BY MS. SCOTT) Mr. Fimbres, could you give us  
8 a short summary of your findings in the supplemental  
9 report and recommendations.  
10 A. Yes. Based on discussions with QCC, we believe  
11 it -- Staff believes it was appropriate to recommend  
12 that QCC be allowed to provide its resold long distance  
13 services statewide, and the resold and facilities-based  
14 local exchange services for business within the QC area  
15 as well. But for resold and facilities-based services  
16 as it applies to anything other than what we've  
17 described as enterprise market, only outside the QC  
18 serving area.  
19 There are a number of reporting requirements in  
20 here, largely having to do with understanding the  
21 impact of QCC's business on QC. Some of the reports  
22 also are to understand the general market condition  
23 having -- subsequent to QCC providing its services to  
24 the enterprise market in the QC service areas.  
25 Q. Okay. Is there anything else that you want to

33 (Pages 126 to 129)

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1 add at this time on the application?  
2 A. No.  
3 MS. SCOTT: Okay. The witness is available for  
4 cross-examination.  
5 ALJ WOLFE: Okay.

6  
7 CROSS-EXAMINATION

8  
9 Q. (BY MR. BERG) Good afternoon, Mr. Fimbres.  
10 Can I get you to take a look at Staff Exhibit 2, and  
11 particularly Page 8 of Staff Exhibit 2.  
12 A. Sure.  
13 Q. That's the list of reports that you and  
14 Ms. Scott were discussing.  
15 A. Yes.  
16 Q. And I'm going to ask you to focus with me on  
17 the reports that are listed under number 8.b, which the  
18 heading is "QC Reports."  
19 Do you see that?  
20 A. Yes.  
21 Q. Okay. The first report in what I'm going to  
22 call 8.b.1, asks for the total number of business  
23 accounts that have moved from QC to QCC by QC wire  
24 center are to be provided in Excel file format using  
25 electronic media.

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1 Is that essentially what you're asking for?  
2 A. Yes.  
3 Q. And, Mr. Fimbres, for what purpose does Staff  
4 want to know the number -- the total number of business  
5 accounts that have been moved from QC to QCC by wire  
6 center?  
7 A. To understand the impact that QCC's operations  
8 have had on QC.  
9 Q. And to what extent does the impact that QCC's  
10 operations have on QC relate to whether QCC is a fit  
11 and proper party to provide service in Arizona?  
12 A. I don't believe Staff looked at it quite the  
13 way you put it.  
14 Q. And to what extent does the total number of  
15 business accounts that moved from QCC -- try again --  
16 from QC to QCC have on the question of whether QCC is  
17 providing adequate service once it has a certificate?  
18 A. Well, again, I don't think it's speaking  
19 directly to your question. Staff was not addressing  
20 whether it was -- did you say adequate service? No.  
21 It's not that issue at all.  
22 Q. In what context or what kind of proceeding  
23 would Staff envision information about the number of  
24 business accounts that have been moved from QC to QCC  
25 becoming relevant?

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1 A. Staff discussed that as being important to the  
2 future AFOR price cap proceeding.  
3 Q. So this information in your mind would be  
4 relevant to a future QC AFOR price cap proceeding?  
5 A. That's correct.  
6 Q. Okay. Because QCC isn't subject to an AFOR  
7 price cap; is that correct?  
8 A. I believe that's correct.  
9 Q. Okay. Mr. Fimbres, I'm going to ask you to  
10 look at number 2 under that same list. And that asks  
11 for the total number of business lines that have moved  
12 from QC to QCC, again by QC wire center. I'm going to  
13 ask you sort of the same series of questions.  
14 To what extent is the total number of business  
15 lines that have moved from QC to QCC relevant to the  
16 question of whether QCC is a fit and appropriate or  
17 qualified party to provide service in Arizona?  
18 A. My answer would be like the first one.  
19 Q. Okay. And if I were to ask you the same  
20 question about to what extent, if you got this  
21 information six months or a year out, it would be  
22 relevant to the question of whether QCC is, in fact,  
23 providing adequate and appropriate levels of service in  
24 Arizona, would your answer be the same? That it  
25 doesn't really apply to that?

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1 A. The question -- Staff did not look at that as  
2 an issue of whether the service was adequate.  
3 Q. And to speed this up a little bit, if I asked  
4 you the same question about number 3, which deals with  
5 total annualized revenues, your answers would be the  
6 same?  
7 A. That's correct.  
8 Q. And isn't it, in fact, true, Mr. Fimbres, that  
9 the only -- or that the use Staff contemplates of the  
10 information provided under 8.b.1, 8.b.2 and 8.b.3, all  
11 relate to questions of the financial impact on QC as  
12 Staff would investigate those impacts in a future AFOR  
13 -- what we've been calling Alternative Form of  
14 Regulation or price cap or rate case docket?  
15 A. I would say that is really the reason --  
16 predominant reason Staff looked at that, but that's not  
17 the only value of the information.  
18 Q. What else would you use it for, Mr. Fimbres?  
19 A. Well, for example, two builds on one, and three  
20 builds on two, which I think is somewhat obvious, but  
21 enterprise market is defined as four lines and above.  
22 So it's one quick sort of look as to see, does that  
23 sort of fit? Does the number of accounts divided into  
24 the number of lines fit with that.  
25 Q. But essentially, Mr. Fimbres, if what you

34 (Pages 130 to 133)



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1 wanted to be sure was that QCC was serving just  
2 enterprise customers of four lines or above, wouldn't a  
3 much more direct way be just to ask Qwest to provide  
4 you information on the makeup of the customer base  
5 they're serving rather than the ones that moved from --  
6 I mean, if you're concerned about who QCC is serving,  
7 aren't you interested in who their customers are  
8 whether they took them away from QC, or whether they  
9 took them away from AT&T or MCI?

10 A. I was simply answering your question about  
11 whether that was the only reason.

12 Q. But you would agree with me that that would be the  
13 information that you would want.

14 A. If you could perhaps --

15 Q. Sure. If your interest were in establishing  
16 that QCC was only serving enterprise customers in the  
17 QC service territory, then you would want to know  
18 whether those customers were four lines or more, and  
19 whether QCC took them away from QC or AT&T or MCI, or  
20 anybody else --

21 A. That's correct.

22 Q. -- so long as it's in that service territory;  
23 isn't that correct?

24 A. That's correct.

25 Q. And wouldn't an easier way to get that

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1 we've established that you wouldn't need it to decide  
2 if they're a fit and proper party, and you wouldn't  
3 need it to decide if they're providing adequate  
4 service.

5 You wouldn't need it to evaluate specific  
6 affiliate transactions between QC and QCC, would you?

7 MS. SCOTT: Your Honor, I'm going to object to  
8 that because he's not really the witness on fit and  
9 proper and the affiliated interest portion of the  
10 report.

11 MR. BERG: I guess Mr. Fimbres has been put  
12 forward as the person who is sponsoring this particular  
13 recommendation of these reports and why they want them,  
14 and I think I'm entitled to ask him, at least to the  
15 extent he knows, what they're going to use it for.

16 ALJ WOLFE: You could ask him if he would use  
17 it for that determination.

18 Q. (BY MR. BERG) Yeah. Mr. Fimbres, you wouldn't  
19 use -- you wouldn't use the information contained in  
20 b.1, 2, and 3 for the purpose of evaluating or  
21 reviewing specific contracts between QC and QCC, would  
22 you?

23 A. Not specific contracts.

24 Q. Okay. Let's take a look at 8.b.4 for a minute.  
25 And this one is a lot longer, so I'm going to try to

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1 information directly just to be to ask QCC to certify  
2 that its not serving anyone who has less than four  
3 lines in the QC service territory?

4 A. Well, to be direct, I'm not sure it's easier.  
5 8.a.1 and 2 also give us another insight on that.

6 Q. But the more direct way of getting the  
7 information would be to ask QCC who they are serving,  
8 rather than to ask QC who may have gone over to be  
9 served by QCC?

10 A. Staff felt it would better to look at the data.

11 Q. Mr. Fimbres, but I think you agreed with me  
12 that the primary use of this data, at least, would be  
13 in a QC AFOR price cap docket; is that correct?

14 A. Correct.

15 Q. Where you would want to know the revenue impact  
16 on QC would be in a QC docket, not in a QCC docket;  
17 isn't that correct?

18 A. Ultimately, that's correct.

19 Q. And to the extent you wanted to look at that  
20 revenue in the context of imputation, the entity you  
21 would be imputing revenue to would be QC and not QCC;  
22 isn't that also correct?

23 A. Correct.

24 Q. And you wouldn't need this sort of information  
25 the information contained in b.1, 2, or 3. I think

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1 come up with a short catch-phrase to characterize it.  
2 But if you think I'm being inaccurate, correct me.

3 What you asked for there are statewide  
4 summarized listing data, and then you go on to talk  
5 about how you would do that.

6 A. Yes.

7 Q. Okay. Mr. Fimbres, what does Staff need QC to  
8 provide statewide summarized listing data for?

9 A. For listings as to -- Staff felt that looking  
10 at the listings in the context of the entire state gave  
11 us an opportunity to evaluate QC's compliance, frankly,  
12 with areas that it's not supposed to be serving.

13 Q. I'm sorry. I want to be sure I understand your  
14 answer. What you're saying is that if you can get  
15 statewide listing data from QC as opposed to QCC, that  
16 Staff would use that information to determine that if  
17 -- to determine if QC is serving outside its service  
18 territory?

19 A. Well, okay.

20 Q. I just want to be sure I understand. I don't  
21 want to put words in your mouth. I want to be sure I  
22 understand your answer.

23 A. The listing information is -- it was a rich  
24 database. That's one way to put it. It has more than,  
25 of course, just QCC.

35 (Pages 134 to 137)

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1 But in looking at the information from QCC,  
2 it's possible to see, based on the listings, whether,  
3 frankly, there's anything that shows up in the  
4 residence main listings, for example. However, your  
5 question started with -- you're saying in using QC's  
6 information.

7 Q. Well, as I understand this -- and correct me if  
8 I'm wrong -- what this calls upon is for QC, not QCC,  
9 to provide Staff every six months with statewide  
10 summarized listing data, and that data includes all  
11 main listings and additional line listings for QC, QCC,  
12 CLECs, ILECs, wireless providers, and other, for each  
13 NPA-NXX; is that correct?

14 A. I believe that's correct, yes.

15 Q. And what I understood you to say originally is  
16 that the purpose Staff wanted this data was to  
17 determine if QC, Qwest Corporation, the ILEC, was  
18 serving outside its service territory.

19 A. Well, that's what I said, but I didn't say that  
20 was the only reason.

21 Q. Okay. What are some other reasons,  
22 Mr. Fimbres?

23 A. Earlier, for example, there was reference made  
24 of the larger competitive situation like in VoIP. So  
25 this information gives us the ability to -- and three

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1 data points in the way we're asking for it every six  
2 months -- to see that the whole picture.

3 Well, some people might be impressed by, for  
4 example, saying, let's say, there's a 20 percent change  
5 in the situation. I mean, the context is that is  
6 impressive if everybody else isn't fixed on a number of  
7 30 percent versus, let's say, 10 percent. So it allows  
8 us to see the context and understand the context.

9 And so it's not just about looking at QCC's  
10 numbers solely and understanding whether they're in  
11 residence or not. It's understanding whether the other  
12 numbers here are changing, higher pace, lower pace, so  
13 forth.

14 So at the end of the two-year period, certainly  
15 as we have proposed it, we would be that much further  
16 along in understanding the larger competitive  
17 situation.

18 Q. But because you're asking for numbers relating  
19 to business accounts, you would be further along  
20 understanding the competitive situation as it related  
21 to business; isn't that correct?

22 I'm sorry. You're right. I was asking about  
23 1, 2, and 3, and this is 4 instead. I apologize.

24 Mr. Fimbres, doesn't the Commission have --  
25 isn't the Commission currently looking into the state

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1 of competition in Arizona on a generic basis?

2 A. Staff knows that there's one open, but I'm not  
3 aware of anything other than it's open.

4 Q. There's an open docket in it. And if Staff  
5 wanted to investigate the state of competition in  
6 Arizona now and going forward, wouldn't it be  
7 appropriate to do that in that generic competition  
8 docket and require all carriers to provide you with the  
9 kind of information you're asking Qwest for in this  
10 docket?

11 A. I don't know that it's appropriate to answer  
12 your question.

13 Q. I mean, if the issue is what is the state of  
14 competition out there, logically doesn't that seem to  
15 you to be part of a generic competition docket?

16 A. Well, I don't know that I can answer that  
17 question. It might be perhaps a better question for  
18 Mr. Abinah to answer as a policy matter.

19 Q. That's fine. Let's go to 8.b.5 for a minute,  
20 and that asks for statewide summarized LERG  
21 information. And I'm going to ask you what LERG stands  
22 for so that we have that in the record and everybody  
23 understands what we're talking about.

24 A. Let's hope I get it right. I think it stands  
25 for Local Engineering Routing Guide or Local Exchange

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1 Routing Guide. That's why I say that.

2 Q. Now that we've got the acronym identified, what  
3 is in the LERG?

4 A. In the LERG, again, a very rich field in the  
5 sense similar to a database and in a sense similar to  
6 the listings. It's not owned by any one participant,  
7 but it's contributed to by many.

8 But in there there are, for example, switch  
9 identifiers, switch locations. You know, all of these  
10 points that I have here. The identifiers that show you  
11 who owns a switch. Identifiers on who owns or who is  
12 assigned the NPA-NXX, which can be different, which by  
13 the way, which is the point on 5.f. I think that's the  
14 one. Yeah.

15 ALJ WOLFE: Mr. Fimbres, could you tell me what  
16 NPA-NXX stands for?

17 THE WITNESS: Number Plan Area. I'm not sure  
18 what NXX means other than it's the prefix.

19 ALJ WOLFE: Okay. Thank you.

20 THE WITNESS: So area code, prefix.

21 And then the thousands groups, now we're  
22 assigning -- in many cases making numbers assignments  
23 below the NPA-NXX, and so it will tell you that. And  
24 so there's lots -- there's also other information, so  
25 there's lots in there.

36 (Pages 138 to 141)

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1 Q. (BY MR. BERG) What is the basic purpose Staff  
2 would want data from the LERG for?

3 A. Well, again, to use information in the same  
4 sense as that information we're requesting in point 4.

5 Q. So to determine who is serving, where they're  
6 serving, where they have facilities, what numbers  
7 they're using to serve, that kind of thing?

8 A. Yes.

9 Q. And, again, that -- I didn't ask you this about  
10 4, but I'll ask you about 4 and 5 both. Neither the  
11 listings data nor the LERG information has anything to  
12 do with whether QCC is a fit and proper party to  
13 provide service in this state; is that correct?

14 A. That's correct.

15 Q. And it doesn't have anything to do with whether  
16 or not on a going-forward basis they'll be providing  
17 adequate service; is that correct?

18 A. Let me think about that one for just a second.

19 Q. Sure.

20 A. Adequate service. I don't think so.

21 Q. And, Mr. Fimbres, do you know if information  
22 from the LERG is available to Staff other than by  
23 asking Qwest for it? Other than by asking QC for it,  
24 to be precise.

25 A. Well, I mean, we don't have it. Is that what

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1 you mean?

2 Q. Yeah. Could you get it somewhere else besides  
3 from QC?

4 A. Some of this I think can be gotten directly  
5 from NPA.

6 Q. Do you know, Mr. Fimbres, whether or not, in  
7 fact, Staff could simply subscribe to the LERG and get  
8 the LERG and its updates the same way Qwest does?

9 A. You know, I really don't know. There was a  
10 time where I thought you had to be some kind of  
11 certified provider to use it, but I actually don't  
12 know.

13 Q. Okay.

14 A. I just know we don't subscribe to it.

15 Q. Again, Mr. Fimbres, questions about who has  
16 switches, where they are, what numbers they're using,  
17 would relate -- Staff's primary use for that  
18 information would be to determine the state of  
19 competition in Arizona. Is that generally correct?

20 A. That's certainly one use. But it would give us  
21 an earlier -- it would give us, again, those data  
22 points that would help us with the renewal of the AFOR  
23 price cap.

24 Q. Again, it goes either to the generic question  
25 of whether there's competition in Arizona, or to the

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1 question of what is an appropriate form of regulation  
2 for QC rather than QCC; is that correct?

3 I think that's what you just said, but correct  
4 me if I'm wrong.

5 A. Well, I mean, I said there were other uses for  
6 it.

7 Q. No. But I think the two you have given me are  
8 -- I asked you and you told me, yes, you could figure  
9 out the state -- it would be indication of the state of  
10 the competitive market. And you also said to me that  
11 it would be useful for you in determining an  
12 appropriate alternative form of regulation or price cap  
13 plan for QC; is that correct?

14 A. But I think I also said that it's useful to  
15 determine where service is being provided. Again, the  
16 business information here would be useful as well.

17 Q. Well, to the extent you're interested in  
18 knowing where service is being provided and by whom,  
19 the primary use for that is to figure out whether a  
20 particular area, whatever that area is, whether it's a  
21 wire center or an area code or a zip code or a  
22 metropolitan boundary, the primary use you would have  
23 for that information is to figure out the extent to  
24 which that area was competitive; isn't that correct?

25 A. That sounds right.

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1 Q. Let me walk you through this fairly quickly.  
2 Again, I'm going to ask you about each of the five  
3 categories b.1, 2, 3, 4, and 5.

4 Mr. Fimbres, do you know of your own knowledge  
5 whether Qwest tracks the information asked for in b.1  
6 at the present time?

7 A. No. No. I do not.

8 Q. How about b.2?

9 A. No.

10 Q. b.3?

11 A. No.

12 Q. b.4?

13 A. You're asking me on 8.b.4?

14 Q. Yes, sir.

15 A. If it tracks? I don't understand the question  
16 then.

17 Q. That's fine. And as to 8.b.5, the answer would  
18 be if the materials are in the LERG, whoever has access  
19 to it has access to the LERG; is that correct?

20 A. Yes.

21 Q. Okay. Do you know -- let me ask you the same  
22 question for QCC. Do you know if QCC tracks the  
23 information contained in 8.b.1, 2, and 3?

24 A. No. Not really.

25 Q. And, Mr. Fimbres, have you undertaken any study

37 (Pages 142 to 145)

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1 or analysis of how difficult it would be for either QC  
2 or QCC to begin tracking this data and reporting it  
3 every six months?  
4 A. Specific to 8.b. 1, 2, and 3?  
5 Q. Uh-huh.  
6 A. No.  
7 Q. And do you know whether CLECs -- or carriers in  
8 Arizona other than QC or QCC routinely report this kind  
9 of information and provide it to Staff?  
10 A. No, I don't.  
11 Q. Mr. Fimbres, I think when Ms. Scott was cross-  
12 examining Ms. LaFave, she kept talking about wanting  
13 18 months worth of this data as part of an application  
14 in 24 months if Qwest -- if QCC -- I'm sorry -- wanted  
15 to expand its service territory.  
16 Do you remember that?  
17 A. Yes.  
18 Q. I've got a couple of questions for you in this  
19 regard. The first one is, if Staff's primary -- if the  
20 purpose Staff wants to use this data for is to evaluate  
21 a later QCC application, why does Staff need it every  
22 six months instead of just getting the 18-month data  
23 when Qwest files in 24 months?  
24 A. Well, Staff feels that three -- you know, we  
25 would have three data points before the end of the --

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1 and then a fourth one, of course, at the end of the  
2 24 months.  
3 But, again, it isn't the only reason. We can  
4 again look and see the state of QC's participation in  
5 residence and even business. So it's not the only  
6 reason.  
7 Q. But couldn't you generally -- let's take 1, 2,  
8 and 3, for example. If you wanted 1, 2 and -- let's  
9 say we're now 24 months out from -- not from today, but  
10 from the date of the Commission order granting QCC a  
11 CC&N in this case.  
12 Couldn't you, when Qwest filed its application  
13 in or after the 24 months, simply ask Qwest to provide  
14 you this data over for the different data points you  
15 wanted during that 24-month period?  
16 A. Staff feels that it would be more prepared if  
17 it had those data points in advance.  
18 Q. And, again, just so we're clear about this, the  
19 data points at least in 1, 2, and 3 relate to accounts,  
20 lines, and revenues related to business customers; is  
21 that correct? I think it says business accounts,  
22 business lines.  
23 A. Yes.  
24 Q. Okay. So assuming that Qwest were in 24 months  
25 to file an application that said, we want to serve -- I

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1 mean, assume with me that QCC -- just so we're keeping  
2 our entities separate -- filed in 24 months an  
3 application to provide residential service in the QC  
4 service territory. This certificate we've asked for  
5 has been granted, and now it's 25 months later.  
6 Because lawyers have nothing else to do but make  
7 filings, somebody files an application saying we want  
8 to be in the residential market in the QC area.  
9 Isn't it true, Mr. Fimbres, that this  
10 information wouldn't tell you -- at least b.1, 2, and 3  
11 wouldn't tell you anything about the state of the  
12 residential market in the QC service territory?  
13 A. Well, nothing specific. What you could see,  
14 however, is if there is a trend in business, what might  
15 the trend be in residence?  
16 Q. So what you do, then, is sort of say, QCC has  
17 taken 20 percent of QC's business in the business area.  
18 From that we can extrapolate it will take some percent  
19 of the residence business in the --  
20 A. No. That's far too simple to look at. But it  
21 sort of bears asking the question.  
22 Q. And, again, Mr. Fimbres, the purpose for which  
23 you would want to know the impact of QCC's entry into  
24 the market on QC is to decide on the appropriate form  
25 of regulation for QC in an AFOR price cap proceeding;

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1 isn't that correct?  
2 A. The appropriate form of regulation? I'm not  
3 sure that I'm in a position to say that. I think it  
4 would be used in the future, as we say, AFOR price cap  
5 proceeding.  
6 Q. Let me ask you a couple of questions about how  
7 these reports are going to work. We're going to pick a  
8 point in time six months out, and you're going to --  
9 let's focus on b.1, 2, and 3 for the moment.  
10 What you're going to ask QC to do is say, tell  
11 us the total number of accounts, lines, and associated  
12 revenues that went from QC to QCC; is that correct?  
13 A. That's what it looks like.  
14 Q. And that would be presumably as of the last day  
15 of that six-month period?  
16 A. Yes.  
17 Q. And isn't it true, then, that, for example, if  
18 QC on the -- if the day before the last day of the six  
19 months -- that's one of those hypotheticals lawyers  
20 love -- the day before the last day of the six months,  
21 a customer shifted from QC to QCC, then that customer  
22 would be included in the total number of business  
23 accounts, business lines, and annualized revenues that  
24 they would report?  
25 A. Oh, I think you would certainly be in a

38 (Pages 146 to 149)

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1 position to explain those kinds of things.  
2 Q. But somebody who ought to be listed the way  
3 that you have defined the report; is that correct?  
4 A. I mean, I think that could happen. But, again,  
5 there's really no reason you couldn't explain that.  
6 Q. And assume with me that the day after we filed  
7 the report, or the day after the end of the six months,  
8 the customer switches back to QC. Then that fact is  
9 not going to be reflected in the report you just got;  
10 isn't that correct?  
11 A. That's correct. In your simple point, that's  
12 exactly correct.  
13 Q. And by the same token, if the customer instead  
14 of switching back to QC switches from QCC to AT&T, that  
15 isn't going to be reflected in that report?  
16 A. Correct.  
17 Q. And, in fact, that's never going to be  
18 reflected in any of these reports, is it? Because you  
19 have never asked -- all you have looked for is a switch  
20 from QC to QCC in the first place; isn't this correct?  
21 A. We're only asking at this point, yes. Correct.  
22 Q. And it isn't going to reflect the fact that the  
23 customer, for example, has gone out of business or  
24 disconnected its service from both QC and QCC, is it?  
25 A. No.

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1 Q. Mr. Fimbres, you were there when Ms. LaFave  
2 testified -- I think we've established and you  
3 understand that Qwest has agreed to provide -- or QCC  
4 -- I'm sorry -- has agreed to provide the information  
5 listed in 8.a.1 and 2; is that correct?  
6 A. Correct.  
7 Q. And to the extent -- and for that matter, is it  
8 your understanding that QCC would also be required to  
9 file whatever reports that CLECs traditionally file  
10 under the Commission's rules governing competitive  
11 local exchange carriers?  
12 A. I'll really not aware of that.  
13 Q. Isn't it true, Mr. Fimbres, that if QCC  
14 reported to you its number of lines, its number of  
15 customers, and its amount of revenues, that that tells  
16 you -- that gives the Staff the information to evaluate  
17 the extent to which QCC's business is growing in its  
18 certificated area?  
19 A. I guess I'm not -- if you would please --  
20 Q. Let's assume that in every six months in this  
21 24-month period you get a report from QCC instead of  
22 QC, and what it shows is the total number of customer  
23 accounts QCC has, the total number of lines it serves,  
24 and the total revenue associated with those lines.  
25 That is going to tell you, isn't it, how

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1 rapidly QCC's business is growing in its service  
2 territory?  
3 A. Well, it will tell us how it's changing, but it  
4 won't tell us some of the underlying reasons for those  
5 changes perhaps.  
6 Q. Okay. That's because it could be picking up  
7 new people moving into the state, it could be picking  
8 up customers from QC, it could be picking up customers  
9 from AT&T, from wireless companies, from anyone; is  
10 that correct?  
11 A. That's correct.  
12 Q. But it would give you a picture of --  
13 particularly if it was categorized by NPA like you've  
14 asked for in 8.a.1, it would give you the extent to  
15 which QCC's share of the market or group of customers  
16 is growing within that NPA, wouldn't it?  
17 A. It wouldn't give us anything on the share of  
18 the market.  
19 Q. It would give you their total number of  
20 customers?  
21 A. Yes.  
22 MR. BERG: Can I have just a minute?  
23 ALJ WOLFE: Yes.  
24 MR. BERG: Thank you, Mr. Fimbres. That's all  
25 I have.

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EXAMINATION

1  
2  
3 Q. (BY ALJ WOLFE) Good afternoon, Mr. Fimbres.  
4 A. I'm sorry. I'm walking away.  
5 Q. No. You're not done yet.  
6 I take it in listening to the responses to your  
7 attorney's questions that your issues that you had that  
8 were expressed in Exhibit S-1 have been resolved by  
9 QCC's filing that they made yesterday, enough for you  
10 to recommend the alternative recommendations that are  
11 in Exhibit S-2?  
12 A. That's correct.  
13 Q. And you say that Staff's primary concern is  
14 with small business and residential markets?  
15 A. That's correct.  
16 Q. I'm going to go through your concerns that you  
17 listed in Exhibit S-2, that are listed in Exhibit S-2.  
18 A. All right.  
19 Q. And you can testify to these; is that correct?  
20 A. Yes.  
21 Q. Okay. Staff Concern 1 that's listed on -- it  
22 begins on Page 2 of Exhibit S-2.  
23 A. Okay.  
24 Q. It states that -- let's see. I think the third  
25 sentence says that while claims of cross-subsidization

39 (Pages 150 to 153)

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1 and price-squeezing could still occur, enterprise  
2 customers and competitors are capable of bringing such  
3 issues before the Commission.

4 Is it possible that cross-subsidization could  
5 be of benefit to enterprise customers?

6 A. Oh, yes. Sure.

7 Q. Do you think that they would have an impetus to  
8 bring those before the Commission?

9 A. No. I'm sorry. That's true.

10 Q. But do you think competitors would be aware of  
11 cross-subsidization and price-squeezing issues?

12 A. Staff did not discuss that, but my answer is,  
13 yes, they would.

14 Q. This next sentence, I'm not sure I understand  
15 what it means. The inappropriate behavior by QCC  
16 should therefore be infrequent and subject to direct  
17 regulation by the very market in which QCC will be  
18 participating.

19 Could you explain that to me?

20 A. Basically, we're saying there that the market  
21 has enough resources and reasons to largely take care  
22 of itself, the enterprise market.

23 Q. Okay. Especially if it's getting a good deal.

24 Sorry. I'm just -- okay.

25 A. If I may, to that point?

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1 Q. Yes.

2 A. If some customers and some competitors  
3 understand that -- and, again, there should be other --  
4 it's not just complaints of things that have happened  
5 to them that should come forward. It should be  
6 complaints or observations about others in the market.

7 So we did not discuss that as you have raised  
8 it. I still think it has the potential to take care of  
9 itself is what I'm saying.

10 Q. Because competitors would bring those kind of  
11 issues to the attention of the Commission?

12 A. Yes. And because customers who are not being  
13 availed of that would bring those potentially to the  
14 Commission if that were to occur, if that were to  
15 occur. And basically what we've said is it would be  
16 infrequent, we believe.

17 Q. Okay. Staff Concern 2 about where you address  
18 the issue of QCC using the Qwest brand that's  
19 traditionally associated with ILEC services, you state  
20 that enterprise market competitors are pretty  
21 sophisticated.

22 That seems to be what you're saying here, and  
23 they won't be -- I don't want to put words in your  
24 mouth. They won't be easily confused is what you say.

25 A. Correct.

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1 Q. If down the road QCC comes in, as Staff  
2 contemplates might happen, and requests authority to  
3 provide the same sort of services to residential  
4 customers, do you think that residential customers  
5 would have the same level of sophistication and not be  
6 confused by more than one Qwest competitor?

7 A. Well, I mean, that's -- if down the road --  
8 see, I'm not sure, you know, how to answer that. I  
9 think Staff's position is that they certainly would be  
10 confused now. But the interesting point would be, what  
11 would change that? And I think that's part of what the  
12 -- what we would have to consider. What has changed  
13 that would lead you to think differently?

14 So I'm not sure that I know how to answer that  
15 down the road.

16 Q. But it's Staff's position that QCC should be  
17 allowed to use the Qwest brand to market these  
18 competitive services to QC customers?

19 A. Enterprise customers.

20 Q. All right. And you're not making any  
21 recommendation as far as what might happen if there  
22 were an application for --

23 A. No. That would be subject to the application  
24 and looking at the data.

25 Q. And which data?

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1 A. Hopefully there will be the data that we've  
2 asked for.

3 Q. And you would need to have that data?

4 A. Well, yes, I would.

5 Q. Okay. In Staff Concern 3 where you address  
6 that, you say that the attempts by QC to evade its ILEC  
7 obligations will be further scrutinized by reports.

8 Okay. Can you explain to me what you mean by  
9 attempts by QC to evade its ILEC obligations?

10 A. If it were to happen. I think there's sort of  
11 the notion of potential. I mean, the reports give you  
12 glimmers of data. For example, in one of the -- one of  
13 the -- what do you call it? Your first set of  
14 questions, I think it's called; right? The first set.

15 What we said is one of the examples of the way  
16 the responsibilities could be evaded is if QCC were to  
17 serve a home development and QC didn't serve it, QCC  
18 would not have a requirement to unbundle. Okay.

19 Now, would the reports tell you something about  
20 that? If they were to happen, I would hope the data  
21 would be in the listings information, for example, and  
22 I would be able to merge that with the LERG information  
23 and perhaps see it. So the point would be further  
24 scrutinized. I'm not sure it would be perfect. That  
25 would be the point.

40 (Pages 154 to 157)

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1 Q. When you say QCC wouldn't be required to  
2 unbundle, are you referring to an obligation to provide  
3 access?  
4 A. Correct. Right.  
5 Q. So you think that QCC should be required to  
6 provide access if it's the only provider to a service  
7 area?  
8 A. No. I didn't say that. I mean, I thought the  
9 question was about QC evading its responsibility. No.  
10 QCC, no.  
11 Q. Okay. How in that scenario that you brought  
12 up, how would QC be evading its responsibilities?  
13 A. Instead of QC serving a home development where  
14 it might be required to unbundle, depending on the type  
15 of network it put in, QCC potentially could serve it  
16 and it would not have that requirement, neither would  
17 any CLEC have it.  
18 So that's the point we used as the example on  
19 how it could be evading its ILEC position.  
20 Responsibilities, I guess, is -- obligations.  
21 Q. Okay. So do you think that QC should be  
22 required to provide infrastructure to every new  
23 development in its service area?  
24 A. Well, no. I mean, I think the point we're  
25 making is to the degree that we would not want to have

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1 QCC being involved with QC evading its  
2 responsibilities.  
3 Q. Okay. Can you give me a different example?  
4 A. Well, I mean, it would be highly speculative at  
5 this point.  
6 Q. Yes. It would just be a hypothetical example.  
7 A. Well, I mean, I suppose if two different  
8 customers were to come to QC and QC were to make  
9 choices, I suppose, on which customers to serve and  
10 which customers not to serve. That's all.  
11 Q. So a discrimination issue?  
12 A. These things are somewhat tied together, right,  
13 which is, I think, the point we made in the responses  
14 we provided to the first set of questions we received.  
15 Q. So when you're talking about QC evading its  
16 ILEC obligations, are you talking about just  
17 carrier-of-last-resort obligations?  
18 A. Yes. That's really the point of that, and that  
19 was the point of the example in which we responded to  
20 the data request.  
21 Q. What is the status of price cap AFOR  
22 proceedings, as you call it, at this point?  
23 A. Would it be appropriate if Mr. Abinah covers  
24 that?  
25 ALJ WOLFE: Sure. Those are all the questions

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1 that I have for you. Thank you.  
2 Redirect?  
3 MS. SCOTT: Yes.  
4  
5 REDIRECT EXAMINATION  
6  
7 Q. (BY MS. SCOTT) Can you refer to Page 8 of S-2.  
8 A. Okay.  
9 Q. And Mr. Berg asked you some questions regarding  
10 QC reports, items 1, 2, and 3; correct?  
11 A. Yes.  
12 Q. And can you just tell us generally what is the  
13 purpose of requesting the information that's identified  
14 in 8.b.1, 2, and 3?  
15 A. The information here as identified in point 9  
16 will be used in future AFOR price cap proceedings to  
17 assist in the evaluation of QC's revenue requirements.  
18 Q. Okay. Is it also relevant to item number 10?  
19 A. Oh, it's very relevant to that.  
20 Q. And how about item number 3, the demonstrations  
21 that Qwest would want QCC to make in the future in a  
22 future application? For instance, is it relevant to 1  
23 and 3?  
24 A. You mean 3.1) and 3.3)?  
25 Q. Right.

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1 A. Yes.  
2 Q. Okay. You indicated in response to a question  
3 from Mr. Berg that you do not believe QCC tracks it at  
4 this time or QC; correct? The information requested in  
5 8.b.1, 2, and 3?  
6 A. Well, that's simply based on the fact that  
7 they're not in the local exchange so they don't track  
8 it. I mean, they have zero customers on that at this  
9 point.  
10 Q. Right. In your opinion, would this information  
11 be unduly burdensome for QC to track in the future?  
12 A. You simply want my opinion?  
13 Q. Yes.  
14 A. Okay. Well, starting with zero customers,  
15 unless you're in residence, you're not talking about  
16 getting a million accounts. You know, the progression  
17 being what it is without knowing, I mean, we wouldn't  
18 know until we saw the first six months of information.  
19 My opinion is no, but that's simply that. It's just an  
20 opinion.  
21 Q. Okay. With respect to 8.b.4, I think you  
22 indicated in response to a question from Mr. Berg that  
23 Staff would utilize the information in part for  
24 compliance purposes; correct?  
25 A. Correct.

41 (Pages 158 to 161)



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1 Q. Would the information also be relevant to  
2 competitive conditions?  
3 A. Very much so, yes.  
4 Q. Okay. And so that it would be relevant, for  
5 instance, to any future application identified in  
6 subpart 3 with respect to the criteria --  
7 A. Yes.  
8 Q. -- set out by Staff?  
9 A. Yes.  
10 Q. Okay. And in your experience in the  
11 telecommunications industry, would this be unduly  
12 burdensome for Qwest to provide?  
13 A. Well, I don't believe so but --  
14 Q. In your opinion.  
15 A. No. I don't believe it will be.  
16 Q. Okay. Let's look at item number 8.b. 5.  
17 A. Okay.  
18 Q. Again, is this information relevant to the  
19 criteria listed in Paragraph 3?  
20 A. Without this information, you have kind of a  
21 limited view of the competitive situation to your  
22 point.  
23 Q. Okay.  
24 A. So it certainly adds context, adds  
25 completeness. Yeah.

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1 Q. And based upon your knowledge of these reports  
2 and the telecommunications industry, is it your belief  
3 that much of the information requested here,  
4 particularly items 8.b.4 and 5, reside with QC?  
5 A. Try that again. Do they reside there?  
6 Q. Does the information reside with QC rather than  
7 QCC?  
8 A. 4 definitely resides with QCC.  
9 Q. Or QC?  
10 A. I'm sorry. QC. Yes. Excuse me. Yes. I  
11 think your question is that it does reside with QC, 5.  
12 And I guess my hesitancy is that it's not the only  
13 place that it resides, but it certainly does reside  
14 there.  
15 Q. When you say it's not the only place it  
16 resides, you're referring to the LERG information?  
17 A. Yes. Exactly.  
18 Q. But we certainly know it resides with QC;  
19 correct?  
20 A. Correct.  
21 Q. We don't know that it resides with QCC;  
22 correct?  
23 A. That is correct.  
24 Q. And isn't it also correct that that's why we're  
25 asking QC to provide the information?

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1 A. Yes. If I may add to that, in getting those  
2 two pieces which compliment each other from the same  
3 source, I mean, I think it adds in the sense of  
4 confidence that the information is -- should I say  
5 complete or -- well, they understand what I'm looking  
6 for.  
7 Q. Okay. So just to summarize your testimony on  
8 these data points or reports, is it a correct statement  
9 that it's not only relevant to the AFOR or generic  
10 docket, but for compliance purposes in this case and  
11 also for future applications by QCC?  
12 A. Yes. Yes, it is. Yes.  
13 Q. Okay. And in your opinion as one of the Staff  
14 persons that will be analyzing the reports that come  
15 in, how important is having the period of data called  
16 for in item 3?  
17 A. In item 3? The 24 months?  
18 Q. Or 18 months, I believe.  
19 A. The 18 months. Well, I mean, I think it's  
20 important because it certainly will help us work with  
21 Qwest on their application. We will have three  
22 periods. We will have analyzed it and be ready to work  
23 with them.  
24 Q. Okay. So that would be a sufficient period of  
25 data or a period of time to give Staff insight into the

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1 data that's collected; is that correct?  
2 A. I think that the best I can say is that it  
3 would be reasonable. It's certainly -- it's not a  
4 snapshot because it's not one point. But, again, it's  
5 not 24 points. But it's very reasonable and, I  
6 believe, not a burdensome period, amount of data.  
7 Q. Okay. And I think Mr. Berg asked you a series  
8 of questions relating to why don't you just wait. Why  
9 doesn't Staff just wait 24 months and then ask QCC for  
10 the information when they submit a new application.  
11 Isn't it true that if we waited they may not  
12 track the data?  
13 A. It's certainly possible.  
14 Q. Would anything preclude QCC from bringing an  
15 application a month after the Commission approved their  
16 application in this case if we didn't have the  
17 requirements in the Staff recommendation requiring them  
18 to provide us data for a certain period of time?  
19 A. Yes. Uh-huh.  
20 Q. Okay. Let's see. And Mr. Berg also asked you  
21 a series of questions relating to the data being a  
22 snapshot in time; correct?  
23 A. Yes.  
24 Q. And that it may be difficult in such snapshots  
25 to capture customers that switch back to QC; correct?

42 (Pages 162 to 165)



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1 A. Correct.  
2 Q. However, in your opinion, would anything  
3 preclude Qwest from bringing such information forward  
4 to the Commission?  
5 A. No. I mean, that was the point I made to  
6 Mr. Berg is certainly they could try to explain that.  
7 And Mr. Berg, by the way, left out the opposite of that  
8 could happen. Just the reverse of that could happen  
9 where customers show up and leave or, you know, just  
10 the opposite could happen.  
11 Q. And with respect to the recommendations  
12 contained in your May 13 Staff Report, S-2, those do  
13 not completely replace the recommendations contained in  
14 the initial Staff Report; correct?  
15 A. That's correct.  
16 Q. They are intended to replace item number 19; is  
17 that correct?  
18 A. Yes. I believe that is right.  
19 Q. Of the initial Staff Report?  
20 A. That was -- yes.  
21 MS. SCOTT: I have one more line of questions,  
22 Your Honor, redirect.  
23 Q. (BY MS. SCOTT) Mr. Berg also, I believe, asked  
24 you a few questions that we do not request this  
25 information from all carriers; correct?

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1 A. He did.  
2 Q. Is one of the reasons for that due to the fact  
3 that we have not before allowed a CLEC affiliated with  
4 an ILEC to operate within the affiliated ILEC service  
5 territory?  
6 A. Yes. That is correct.  
7 MS. SCOTT: No further questions, Your Honor.  
8 ALJ WOLFE: Thank you.  
9 Recross?  
10 MR. BERG: Just a couple of questions on  
11 recross.  
12  
13 **RECROSS-EXAMINATION**  
14  
15 Q. (BY MR. BERG) Mr. Fimbres, Ms. Scott just took  
16 you through Exhibit S-2.  
17 A. Yes.  
18 Q. And we went through the listed categories of  
19 data under 8.b.1, 2, 3, 4, and 5. Do you remember  
20 that?  
21 A. Uh-huh.  
22 Q. And one of the questions she asked you was  
23 wouldn't these be helpful for Staff if Qwest filed an  
24 application in 24 months to expand into the small  
25 business and residential markets to demonstrate the

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1 three criteria that Staff has in Paragraph 3 on Page 7.  
2 Do you remember that line of questioning?  
3 A. Yes.  
4 Q. Isn't it equally true, Mr. Fimbres, that if QCC  
5 never files an application to expand into the small  
6 business and residential markets in the QC service  
7 territory, that what Staff is asking QCC to do is to  
8 continually report this data on a rolling, six-month  
9 basis without any use being made of the data in  
10 connection with any application QCC files?  
11 A. May I explain my answer?  
12 Q. Sure.  
13 A. I mean, I think the simple answer is yes. But  
14 I think the fact that -- your activities in the other  
15 states suggest that you will at some point, and it  
16 makes sense that you will.  
17 Q. But it's possible that QCC could decide that  
18 the market niche it wants to serve in Arizona is  
19 enterprise customers, and that, therefore, what would  
20 happen is this information would be accumulated to  
21 prepare for an application to change a CC&N which  
22 application would never be filed. That's certainly  
23 possible, isn't it?  
24 A. I think the position Staff would have to take  
25 is it's highly unlikely that you will not file.

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1 Q. But, again if we did not, we would have given  
2 you all of this data and you wouldn't be using it for  
3 that purpose. Is that fair?  
4 A. We would have been using it nonetheless.  
5 Q. For other purposes related to QC and the AFOR;  
6 is that correct?  
7 A. Related to QCC. To relate to QCC.  
8 Q. To QC and the AFOR? I'm sorry.  
9 A. QCC, unless I've lost track of the question  
10 here.  
11 Q. Let me try this again. If QCC does not file an  
12 application to expand its certificate --  
13 A. Yes.  
14 Q. -- I think what you told me is that the primary  
15 use of the data in 8.b.1, 2, 3, 4, and 5 would be in  
16 evaluating a price cap proposal or AFOR for QC; isn't  
17 that correct?  
18 A. Yes. And what I said earlier was that's not  
19 the only reason. It also gives us insight onto the  
20 compliance side of QCC.  
21 Q. Mr. Fimbres, assuming for the moment that QCC  
22 is permitted to take large business customers away from  
23 QC. I mean, that's what the certificate you have  
24 recommended would permit them to do. Are you with me  
25 so far?

43 (Pages 166 to 169)

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1 A. QCC. Sure.  
2 Q. Then how would knowing the number of business  
3 accounts that migrate from QC to QCC show you whether  
4 QCC is complying with its certificate?  
5 A. By itself, 8.b.1 does not. If I use it with  
6 8.b.1 and 2, then it does. Again, the average -- it  
7 lets me see. If the average of -- if I divide the  
8 number of lines by the number of accounts and the  
9 average is -- let's take an extreme example -- 100,  
10 then certainly that's fine; right? But if it's one,  
11 then it bears asking a serious question. If it's five,  
12 six, then you just don't know. Okay. That's --  
13 Q. Mr. Fimbres, given the nature of the enterprise  
14 market in Arizona as you understand it based on your  
15 experience in both the telecommunications industry and  
16 here for the Commission Staff, given the number of  
17 lines that a lot of these enterprise customers have,  
18 isn't it highly unlikely that you would get a report  
19 that showed a number of four or less lines average per  
20 customer?  
21 A. I mean, I don't know unless I see the data.  
22 That would have to be the answer.  
23 Q. And certainly the revenue information, b.3,  
24 isn't going to tell you that, is it? It's going to  
25 tell you we're getting money. It's not going to tell

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1 you where we're getting it from; isn't that correct?  
2 A. 3, yes.  
3 Q. You had a dialogue with the Judge about evading  
4 -- about the possibility that QC would evade its  
5 regulatory responsibilities. Do you remember that --  
6 A. Yes.  
7 Q. -- line of questioning?  
8 A. Uh-huh.  
9 Q. And you pointed out circumstances where, for  
10 example, QCC might go into a subdivision and then take  
11 the position, we're not QC, so we don't have any  
12 unbundling obligations under the Act.  
13 Do you remember that discussion?  
14 A. Yes.  
15 Q. Mr. Fimbres, are you aware of any situations in  
16 the QC service territory as it exists today where a  
17 carrier has put facilities into a subdivision and then  
18 taken the position that it doesn't have to unbundle  
19 those -- offer those facilities to a competitor on an  
20 unbundled basis?  
21 A. Do you mean someone other than QC?  
22 Q. Well, my first question was are you aware of  
23 anyone doing it?  
24 A. If you're referencing Cox, then yes.  
25 Q. And the answer to my next question would be

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1 it's Cox; is that correct?  
2 A. Correct.  
3 Q. And isn't it true that that's an issue that  
4 exists today, and, in fact, Staff is looking into that  
5 issue actively at this time?  
6 A. It is an issue that exists with CLECs that do  
7 not have ILEC affiliates.  
8 Q. And at the moment, since there are no CLECs  
9 that have ILEC affiliates, it's an issue that exists  
10 with any CLEC today. Is that fair?  
11 A. Today, yes.  
12 MR. BERG: Nothing further. Thanks.  
13 ALJ WOLFE: Anything further, Ms. Scott?  
14 MS. SCOTT: Just very briefly.

FURTHER REDIRECT EXAMINATION

18 Q. (BY MS. SCOTT) With respect to the reporting  
19 obligations, again, is there a limit on those that is  
20 contained in the Staff recommendation?  
21 A. Oh, you're talking to me?  
22 Q. Yes. I'm sorry?  
23 A. I thought I was finished. We keep going back  
24 and forth.  
25 MR. BERG: Feel a little bit like a ping-pong

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1 ball?  
2 THE WITNESS: I was ready to go.  
3 MS. SCOTT: No. I'm not finished yet. I'm  
4 sorry.  
5 Q. (BY MS. SCOTT) Mr. Berg was talking about the  
6 reporting requirements under 8.a. and b.  
7 A. Okay.  
8 Q. Is there a limitation that's contained in the  
9 recommendation on how long those reporting requirements  
10 are to last?  
11 A. For three years. It's in 8. Yes. In the  
12 sentence in 8.  
13 Q. Okay. And with regard to the last conversation  
14 that you just had with Mr. Berg regarding the  
15 obligations of ILECs and CLECs with respect to  
16 unbundling, is it your understanding under current FCC  
17 orders that ILECs are required to unbundle under  
18 Section 251 but CLECs are not?  
19 A. That is correct.  
20 MS. SCOTT: No further redirect.  
21 THE WITNESS: I'm not moving now.  
22 MR. BERG: I have nothing further.  
23 ALJ WOLFE: Okay. You're excused as a witness,  
24 Mr. Fimbres. Thank you for your testimony today.  
25 (Mr. Fimbres was excused as a witness.)

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1 ALJ WOLFE: We'll take a short break now before  
2 Mr. Abinah. We'll come back here in 10 minutes.  
3 (A recess was taken from 3:42 p.m. to  
4 4:07 p.m.)

5 ALJ WOLFE: Back on the record.  
6 The witness can be sworn.  
7

8 ELIJAH ABINAH,  
9 called as a witness on behalf of Staff, having been  
10 first duly sworn by the Certified Court Reporter to  
11 speak the whole truth and nothing but the truth, was  
12 examined and testified as follows:

13  
14 DIRECT EXAMINATION

15  
16 Q. (BY MS. SCOTT) Okay. Mr. Abinah, could you  
17 please state your name and spell it for the record, and  
18 also tell us who you are employed by and in what  
19 capacity.

20 A. Elijah, E-L-I-J-A-H, Oladapo, O-L-A-D-A-P-O,  
21 Abinah, A-B-I-N-A-H. I'm employed by the Arizona  
22 Corporation Commission as an Assistant Director in the  
23 Utilities Division.

24 And before I proceed, let me let you know that  
25 I talk fast. So when I'm doing that, please ask me to

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1 slow down.

2 Q. And do you have before you what are marked as  
3 S-1 and S-2 in this proceeding?

4 A. Yes.

5 Q. And are you familiar with the subject matter of  
6 Qwest Communications Corporation's application to have  
7 its Certificate of Convenience and Necessity expanded  
8 to include resold long distance and resold and  
9 facilities-based local service?

10 A. Yes, I am.

11 Q. Okay. And you're also very familiar with the  
12 supplement and amendments to the application that have  
13 been filed?

14 A. That's correct.

15 Q. And with respect to S-1 and S-2, you reviewed  
16 both reports?

17 A. That's correct.

18 Q. And had input into them?

19 A. That's correct.

20 Q. And was your input into these reports on policy  
21 issues?

22 A. That's correct. It's on policy issues.

23 Q. Okay. And so your testimony here today is with  
24 respect to the policy issues underlying both of these  
25 reports?

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1 A. That's absolutely correct. And whatever  
2 questions the ALJ has for me.

3 Q. Okay. And I would like to direct your  
4 attention at this time to S-2.

5 A. Okay.

6 Q. And the Staff recommendations contained on  
7 pages 6 through 9.

8 A. Okay.

9 Q. And it's your understanding, is it not, that  
10 the differences between QCC and Staff with respect to  
11 Staff's recommendations focus primarily on item  
12 number 3 and item number 8.b.?

13 A. That's correct. My belief is QCC has issue  
14 with Staff Recommendation No. 3 and Recommendation  
15 No. 8.b.1 through 5.

16 Q. Okay. And directing your attention to 8.b.  
17 In your opinion, why is the information requested in  
18 8.b.1, 2, and 3 important to Staff?

19 A. If I may, Your Honor, I would like to borrow a  
20 line from Commissioner Mundell. He always say from the  
21 bench, you have to ask the right question. If you  
22 don't ask the right question, especially from Qwest,  
23 you will not get the answer that you deserve, even  
24 though they know what you want. That's my first point.

25 The second point is I've heard all day that QC

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1 is not a party to this proceeding, which is correct.

2 Staff acknowledges that QC is not a party to this  
3 proceeding. But if you look around today -- I've been  
4 here for two years, and I've been involved in a lot of  
5 proceeding involving Qwest.

6 Qwest Corporation, QCC, and QLDC, it's the same  
7 individuals. Mr. Pat Quinn, Mr. Ziegler. -- And I'm  
8 sorry I have to mention names, but it's a fact.

9 Mr. Pat Quinn, Mr. Ziegler, Mr. Curtright, Mr. Rick  
10 Peterson that comes here to represent the same company.

11 So for this company to claim that QC is not a  
12 party to this proceeding, I think -- I don't want to  
13 use the word disingenuous, but I think it's almost like  
14 that, because they are part of this company.

15 We are talking about a company -- we have to  
16 look at the big picture. We have this parent company  
17 up there, QCII. They have QCC, they have QC, and they  
18 have QLDC. It's the same company. It's the same  
19 individual that comes here to represent the company.

20 In addition to that, Section 14-2-804 of the  
21 Commission rules require that the Commission can  
22 request any information as it relates to affiliate from  
23 any company. And I believe Your Honor directed us in a  
24 procedural order that you issued on, I believe,  
25 February 4, asking us to look at some issues, and I

45 (Pages 174 to 177)

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1 believe you raised that issue earlier. It has to do  
2 with Section 272, the affiliate rule waiver. And I  
3 believe there's one other thing, compliance with  
4 Commission Order 66612, which is compliance with that  
5 decision. And I believe it's in this report, and at  
6 the appropriate time I would like to address it.

7 So if you look at the big picture, this company  
8 would come here and tell you, well, it's QCC or QC.  
9 But at the end of the day, if you look at the big  
10 picture, the parent company knows the strategy that  
11 they want to employ, and that's why we believe it's  
12 appropriate for QC to provide the report.

13 In addition to that, today, who has  
14 information? It's QC that has information. It's not  
15 QCC. In addition to that, if and when the time comes  
16 that QC file an application for modification,  
17 consolidation or whatever to the AFOR, which is  
18 Alternative Form of Regulation, if you request the  
19 information from QC or QCC, the response is what we're  
20 getting today. QCC is not part of this proceeding.

21 So the only way to get the information down the  
22 road is to require QCC and QC to provide us with that  
23 information. Because at the end of the day, when we go  
24 -- the ALJ maybe also want to see the information. The  
25 Commissioners will want to see the big picture. How is

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1 this going to affect QC? Because you come here as an  
2 individual, but, at the end of the day, it is the same  
3 individual that represents QC, QCC, and QLDC.

4 Also, we believe -- and I will address  
5 number 4, the issue of compliance. Your Honor, you  
6 have been here longer than I have. We have issue with  
7 Qwest compliance, and it's not a secret. There was a  
8 proceeding against Qwest on Section 251, 271, and the  
9 Qwest cost docket in which Qwest was not in compliance  
10 with Commission order.

11 We need this information to make sure that  
12 Qwest is in compliance with the Commission order, and  
13 that's one of the reason we want to see the information  
14 from both QC and QCC.

15 Also, QC, we would like to see the information  
16 because we want to see the level of competition between  
17 QC and QCC, and QCC and other CLECs. At the end of the  
18 day, during the -- if and when QC comes for the  
19 modification of the AFOR, they might provide us with  
20 information that relates to other CLEC, but we might  
21 not have the information that's related to QCC. If we  
22 have this information today ahead of time, we are able  
23 to analyze what the impact is on QC.

24 It is not a secret, Your Honor, Qwest last year  
25 filed an application claiming they have over 300

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1 million revenue deficiency. What is going to happen in  
2 three or four years? What would be the deficiency be  
3 even though the revenue is moving from one company to  
4 another company to assist the company? And that's  
5 information that we believe is relevant. Those are the  
6 information that we believe that the Commissioners will  
7 ask of Staff at the end of the day.

8 So we believe it's relevant for QCC and QC to  
9 provide jointly -- for the Commission to order this  
10 company jointly to provide this information so that  
11 Staff will be able to analyze the effect of QC's  
12 operation based on QCC's application.

13 Let's go further than that. What happened with  
14 quality of service? If all the customers move from QC  
15 to QCC, will that affect -- will the company divide  
16 their investment from QC to QCC? We don't know. I  
17 mean, by getting some of this information, all of this  
18 relevant information, we will be able to present  
19 informed recommendation to you, Your Honor, and to the  
20 Commissioners.

21 Carrier-of-last-resort obligation. It's there.  
22 Like Mr. Fimbres mentioned earlier, the carrier-of-  
23 last-resort obligation is on QC. What happen if a  
24 majority of the lines move from QC to QCC? It happened  
25 in Nebraska. QC filed an application claiming they no

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1 longer the dominant carrier, and they want to be  
2 relieved of the obligation of 251. That is why we  
3 believe all of this information is important and  
4 relevant.

5 And I don't mean to go on. I mean, please stop  
6 me if you need to. So that's why we believe the  
7 information should be provided by both QC and QCC.  
8 Because at the end of the day, the company would claim  
9 oh, it's QC. It's QCC. So we believe the Commission  
10 should order this company jointly to provide the  
11 information.

12 Q. Okay. Now, I think we have covered very  
13 thoroughly the reporting requirements in 8.b. I want  
14 to ask you one other question, though, Mr. Abinah.

15 Do you believe that any of the requirements in  
16 8.b.1 through 5 would be unduly burdensome for the  
17 company given your experience in this industry?

18 A. Not to the best of my knowledge. And I believe  
19 Mr. Fimbres testified earlier, especially to 4 and 5,  
20 which I don't have knowledge about that. I believe 1,  
21 2, and 3 should not provide a lot of -- that should not  
22 be a lot of hard work to provide this information to  
23 Staff.

24 Q. Okay. Now I would like to direct your  
25 attention to Page 7 of the report, Staff's

46 (Pages 178 to 181)

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1 Recommendation No. 3.

2 A. Okay.

3 Q. Can you explain why it's important to have 18  
4 months of data in order to make an informed  
5 recommendation to the Commission on a future  
6 application?

7 A. I'll be glad to address that. Actually, I  
8 would be glad to address an issue that Your Honor asked  
9 earlier, which might be part of the answer to your  
10 question.

11 You asked about Section 272. As you know, the  
12 Telecom Act requires a biannual audit, which is a  
13 two-year audit of Qwest Communications, Qwest  
14 Corporation, QCII compliance with Section 272. It's a  
15 two-year process. That is why we believe we should  
16 pick the -- that's why Staff picked two years as a  
17 reporting timeline.

18 I also go further than that. Qwest always -- I  
19 shouldn't say complain, but I'll just say complain to  
20 Staff that they've been treated differently than other  
21 CLEC. Your Honor, if you refer back to Staff's  
22 original report on Page 11, we identify four companies  
23 that came here, four CLECs that came here that request  
24 an extension into extension of their CC&N. Staff  
25 recommended and the Commission approved CC&N extension

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1 for those company outside their territories.

2 In this application, we've bent over backwards  
3 to accommodate Qwest's request. We were not consistent  
4 with what we did. If we are consistent, our answer  
5 would be no. But Qwest approached Staff, informed  
6 Staff that it wants one-stop shopping. Because of  
7 that, we accommodated Qwest.

8 And that is why we believe by giving that  
9 accommodation, the condition that was proposed is  
10 appropriate because we have not done that for anybody  
11 else. We have bent over backward for Qwest for them to  
12 be able to provide service to large customers in QC's  
13 territory. We've not done that for anybody else.

14 We picked two years -- and I'll address the  
15 18 months' data. We also picked two years. We could  
16 have done the same thing they did in Nebraska. Qwest,  
17 there was a restriction for seven years in Nebraska.  
18 Qwest application was approved in 1998 in Nebraska.  
19 The restriction was lifted this year. If you do the  
20 math, it's a seven-year restriction on business  
21 location.

22 We didn't pick seven years. We picked two  
23 years. Two years because we can tie to 272 audit, and  
24 we believe the two years data will allow us to analyze  
25 and identify any concerns that we mention in the

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1 original Staff Report in which Mr. Fimbres have  
2 addressed.

3 Your Honor, if you go back to the concerns --  
4 and I was listening to Mr. Berg asking Mr. Fimbres  
5 about competition. Your Honor, the first item says QC  
6 -- I'm on Page 7, item 3.1).

7 It says QC and QCC can demonstrate that there  
8 will be no adverse impact on QC's operation. That's  
9 one of the reasons we need the report. The first item  
10 has nothing to do with competition. We have to know  
11 what the adverse effect would be on QCC. What happened  
12 to the revenues? What happened in three or four years  
13 when it request for renewal of AFOR. How would this  
14 revenue be treated?

15 This is the same company. You're talking about  
16 a sister company taking away your customers. How would  
17 the migration -- is it an aggressive migration by one  
18 company to the other, or is it just mere competition?  
19 We wouldn't know unless we have this information. Yes,  
20 QCC might be aggressive and go after QC's customer.  
21 Will they be aggressive going after Cox customers?

22 Because if you just going after QC's customers  
23 in which you're shifting revenue from one subsidiary to  
24 another subsidiary, and they're going to come to this  
25 Commission and request a revenue deficiency increase, I

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1 think we should be able to justify it to Your Honor, if  
2 you are the ALJ for that case, and to the Commissioners  
3 why QC should have additional revenue or not. Because  
4 we believe shifting revenue from one -- from the same  
5 -- from a sister company to another company should be  
6 taken into consideration when the Commission is making  
7 their decision. So, I mean, those are the reasons why  
8 we believe the 24 months is appropriate.

9 Also, if you look at item number 2, it says QCC  
10 can demonstrate that Staff's five concerns identified  
11 in February 23, 2005 can be successfully resolved.  
12 That has nothing to do with what Mr. Berg alluded to us  
13 and Mr. Fimbres. We're talking about discrimination.  
14 We want to make sure QC is not discriminating against  
15 other CLEC.

16 Okay. We talking about -- if you look at  
17 number 1, we're talking about leveraging. How is QCC  
18 going to leverage the name? We recognize that Section  
19 272 of the Telecom Act allow QCC and QC to have the  
20 same name, so we cannot require Qwest to change their  
21 name. If we can do that, we will have required them to  
22 use a separate name so that it cannot be leveraged, the  
23 name, the facilities, the personnel, like we see today.

24 It's the same company. It's the same  
25 individual that represents QC, that comes here to

47 (Pages 182 to 185)

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1 represent QCC, that comes here to represent QLDC. We  
2 don't know what is going to shift from one company to  
3 the other. The facilities. Whose facilities is it?  
4 Who is going to control the facilities?

5 Yes, Qwest claim they have interconnection  
6 agreement. It's a fact they have interconnection  
7 agreement. But in order to be able to verify --  
8 there's the issue of trust plus verify. We can trust  
9 Qwest, but we need to verify to make sure that the  
10 equipment, the personnel, the facilities of QC are not  
11 being moved around and not being leveraged by one  
12 company against the other and/or against a CLEC. So  
13 that's the reason why we believe this condition should  
14 be required by QCC and QC.

15 The issue of the 18 months, even the company in  
16 the past have told us it takes a long time to get our  
17 information. You know, if you look at the rate case,  
18 we use at the minimum 12 months' data. Sometimes we  
19 use six months past test year period, which is 18  
20 months.

21 I think it's appropriate for Staff to have  
22 18 months data to be able to analyze the effect on QC's  
23 operation; to know what the effect is on leveraging; to  
24 make sure that they're not discriminating against other  
25 CLECs; to make sure that they're competing against each

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1 other, not just migrating customers; to make sure that  
2 they're competing with Cox or any other CLEC.

3 That's why we believe this information is  
4 necessary, Your Honor. And also you address the issue  
5 of -- you requested -- I don't know if you want me to  
6 address that now. I can wait.

7 ALJ WOLFE: You can ask your attorney.

8 MS. SCOTT: I think at this point, unless you  
9 have something else you want to say, I think at this  
10 point the witness would be available for cross-  
11 examination, and then any further questions that Your  
12 Honor may have.

13 ALJ WOLFE: Okay. Mr. Berg.

14  
15 CROSS-EXAMINATION

16  
17 Q. (BY MR. BERG) Mr. Abinah, I want to start with  
18 an area of questions I had from Mr. Fimbres.

19 It's your understanding that Staff reviews  
20 interconnection agreements that are filed by Qwest  
21 Corporation and CLECs; is that correct?

22 A. Consistent with Telecommunication Act, Staff  
23 can only reject an interconnection agreement if it  
24 discriminate against another carrier that's not a party  
25 to the agreement or it's not in the public interest.

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1 So we use that standard to review the interconnection  
2 agreement.

3 Q. And so if an interconnection agreement between  
4 Qwest Corporation and Qwest Communications Corporation  
5 were in Staff's view discriminatory against other  
6 CLECs, then Staff would recommend that the Commission  
7 reject that interconnection agreement, wouldn't it?

8 A. We approved the interconnection agreement  
9 consistent with the Telecom Act.

10 Q. And one of the requirements is that it not  
11 discriminate against other CLECs?

12 A. That's correct.

13 Q. And so if you thought it discriminated against  
14 other CLECs, you would recommend rejection, wouldn't  
15 you?

16 A. If I have to review an interconnection  
17 agreement and I find out it discriminate against a CLEC  
18 that's not a party to the interconnection agreement,  
19 yes, I will recommend denial.

20 Q. And at this point, Qwest Corporation and QCC  
21 have an interconnection agreement that's been permitted  
22 to go into effect after Staff reviewed it; isn't that  
23 correct?

24 A. Well, I believe according to your filing you  
25 said it went into effect by operation of law. So

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1 that's correct.

2 Q. So essentially Qwest filed it, Staff had a  
3 period of time to look at it, and because the  
4 Commission did not reject the agreement within that  
5 period of time, it went into effect. Is that your  
6 understanding of how it works?

7 A. I believe the Telecom Act requires that  
8 interconnection agreement be approved 90 days from the  
9 date it was filed. And if it's not approved, it goes  
10 into effect by operation of law.

11 Q. And if the Commission Staff in that 90 days had  
12 reviewed the agreement and concluded that it was  
13 discriminatory against other CLECs than QCC, it would  
14 have brought that issue to the Commission and  
15 recommended rejection, wouldn't it?

16 A. That's accurate. But in the past, we've been  
17 in a situation in which those agreements were never  
18 filed with the Commission.

19 Q. But in this case there's no question that the  
20 agreement was filed with the Commission, is there?

21 A. That's correct. But there's tendency that  
22 there might be some agreement out there, which I hope  
23 not, that it discriminate against other party, and it's  
24 not for -- it might not be filed here.

25 Q. And I think I've asked you this, but let me

48 (Pages 186 to 189)

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1 break that into two parts.

2 First of all, this agreement was filed, you  
3 reviewed it, and you concluded that it wasn't  
4 discriminatory; isn't that correct?

5 A. The agreement was filed. Staff reviewed the  
6 interconnection agreement. And consistent with the  
7 rules, the individual review and recommended  
8 interconnection agreement, yes.

9 Q. And you have raised the point that -- I think  
10 you raised this both in your summary and just now with  
11 me, that one of the reasons that you want the  
12 information in A-1 -- or I'm sorry. -- 8.b.1, 2, 3, 4,  
13 and 5, is because you're concerned about the  
14 possibility of discrimination by Qwest in favor of QCC  
15 and against another CLEC; is that correct?

16 A. I said we need the report. We need the  
17 Commission to order QC and QCC to provide the report  
18 jointly so we can know the effect of granting QCC  
19 application on QC.

20 Q. Okay. That was the first point you made. Then  
21 you said that you needed it also to be sure that there  
22 wasn't discrimination going on, or did I misunderstand  
23 you?

24 A. Possibly, yes.

25 Q. Possibly, yes, I misunderstood you, or possibly

Page 191

1 yes --

2 A. Possibly I said that.

3 Q. Let me ask you the question again, then, and  
4 see if you'll say it or not then.

5 When you look at the information Staff is  
6 requesting in 8.b.1, 2, 3, 4, and 5, is Staff gathering  
7 that information to evaluate whether Qwest is  
8 discriminating in favor of QCC and against other CLECs?  
9 A. Well, that's not the only reason why we're  
10 going to request -- that we're requesting this  
11 information.

12 As I mentioned earlier, we're requesting the  
13 information to make sure that Staff can analyze the  
14 effect of QCC's -- granting QCC's application on QC's  
15 operation.

16 Q. Okay. What I understand you to be saying,  
17 Mr. Abinah -- and I'm not trying to be difficult -- is  
18 as to the information specifically listed here in b.1,  
19 2, 3, 4, and 5, Staff is asking for that information in  
20 order to evaluate the impact of QCC's operations on QC?

21 A. Let me clarify. I think I addressed 1, 2, 3,  
22 and 4. I didn't address 5.

23 Q. Okay.

24 A. And when I address 8.b.4, I solely mentioned  
25 compliance. Now, 8.b.1, 2, and 3, in addition to the

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1 fact that we want to make sure that we are able to

2 analyze the effect, the operational effect, that  
3 granting QCC's application will have on QC, yes, there  
4 might be some issue of discrimination on level of  
5 competition among QC and QC, and level of competition  
6 among QCC and other CLECs.

7 Q. Mr. Abinah, with all due respect, how is  
8 knowing the total number of business accounts that have  
9 moved between QC and QCC, and the total number of  
10 business lines that moved between QC and QCC, and the  
11 total annualized revenue associated with those accounts  
12 and lines going to tell you whether QC is  
13 discriminating in favor of QCC?

14 A. Well, let me clarify what I said. Okay. I  
15 said the information we're requesting would let Staff  
16 analyze whether QC is competing actively with QCC. Did  
17 I say that? And then whether QC is competing actively  
18 with other CLECs, and to see whether it's a fair  
19 competition or a mere migration. That's what I believe  
20 I said.

21 Q. Mr. Abinah, does the Commission track today in  
22 anything like the format you're asking for here the  
23 number of customers who migrate from QC to other CLECs?

24 A. There's no need for the Commission to track  
25 that because no other CLEC is requesting to provide

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1 service in their ILEC's territory.

2 Q. Okay. No. My question probably wasn't clear.  
3 I want to know, do you track the information for how  
4 many business accounts in a six-month period by QC wire  
5 center move from QC to AT&T?

6 A. Staff does not track that, but I believe the  
7 company do track that. Because if you look at your  
8 filing in AFOR, you came -- I mean, and I know it is  
9 public information, Your Honor.

10 You, in your filing, you claim at the beginning  
11 of the year X, you have this number of access line.  
12 Today, at the end of year X, you have this number of  
13 access lines. So the company tracks that information.

14 Q. Mr. Abinah, I don't think you're answering my  
15 question. My question is, does Commission Staff track  
16 the number of business accounts or lines in any  
17 six-month period that moves from QC to AT&T or other  
18 CLECs?

19 A. Yeah. There's no need for us to track the  
20 number of line loss from QC to any CLEC.

21 Q. So I take it your answer is no. If you say you  
22 don't need it, then you don't do that. Is that a fair  
23 answer?

24 A. The answer is there is no need as of today.  
25 There is no need to track the number of access line

49 (Pages 190 to 193)



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1 loss by QC to a CLEC.  
2 Q. Okay. Let me ask you --  
3 A. But at the same time, when you file your AFOR,  
4 you demonstrated at the beginning of the test year that  
5 you have X number of customers, and at the end of the  
6 test year you have X minus Y number of customers. So  
7 the company today track the line loss.  
8 Q. Do you know if it tracks to whom it loses the  
9 line rather than we went down 500,000 lines, does it  
10 tell you who they lost the 500,000 lines to?  
11 A. I believe that's information that the company  
12 might track. They might not. I don't know.  
13 Q. Does the Staff -- let me ask you a similar  
14 question. Does Staff track for any six month given  
15 period the total number of business accounts or lines  
16 that QCC loses to wireless carriers in each QC wire  
17 center?  
18 A. Like I said, you will have the information. We  
19 don't track it.  
20 Q. You don't track it?  
21 A. We don't track that.  
22 Q. Mr. Abinah, if you don't have the migration to  
23 CLECs, and you don't have the migration to wireless  
24 carriers, how can having the number of customers that  
25 migrate from QC to QCC demonstrate any kind of

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1 discrimination because you don't have anything to  
2 compare it to? Isn't it discriminatory only if there's  
3 different treatment between the companies?  
4 A. Can you please repeat your question?  
5 Q. Sure.  
6 A. Because it looks like that was a statement.  
7 Q. As I understand the concept of discrimination,  
8 would you agree with me it consists in treating  
9 similarly situated people differently? That's what  
10 discrimination means?  
11 A. That's correct.  
12 Q. Okay. If you know the number of lines that  
13 went from QC to QCC but you don't know the number of  
14 lines that went from QC to any other CLEC, or that went  
15 to wireless carriers or that went to anyone else, how  
16 can that data be probative of any kind of  
17 discrimination because you know how one person is  
18 treated but you don't know how anyone else is treated?  
19 Isn't that a logical consequence of gathering data that  
20 way?  
21 A. But today, Mr. Berg, you have no reason to  
22 track the number of line loss to QCC because QCC is not  
23 operating within QC's territory.  
24 Q. Again, Mr. Abinah, I'm going to ask the  
25 question one more time. If you only know the number of

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1 lines that go between QC and QCC, you can't determine  
2 that there's any discrimination because you have  
3 nothing to compare it to. You don't know how many  
4 lines are going from QC to AT&T; is that correct?  
5 In order to analyze discrimination, you have to  
6 have something to compare it to. Would you agree with  
7 me, Mr. Abinah?  
8 A. I would agree with you if I said  
9 discrimination. I said the level of competition  
10 between QC and QCC, and the level of competition  
11 between QC and other CLECs.  
12 Is QCC actively going after other CLECs'  
13 customers, or is QCC actively goes after QC's  
14 customers? I don't see where I said discrimination.  
15 I'm talking about level of --  
16 Q. Mr. Abinah, assuming that the only data you get  
17 is how many customers that go from QC to QCC, you can't  
18 conclude anything about either, whether QC is  
19 discriminating in favor of QCC, or whether QCC is  
20 discriminating in favor of QC by picking up only its  
21 customers without picking up all the other customers  
22 because you have nothing to compare it to; isn't that  
23 correct?  
24 A. That's correct. But at that point, at the  
25 discretion of Staff in the application, Staff can issue

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1 a DR to request that information.  
2 Q. But, Mr. Abinah --  
3 A. And at that point -- can I please respond?  
4 Q. I'm sorry. I didn't mean to cut you off.  
5 A. At that point we have the data to compare to.  
6 We can issue a data request to request that  
7 information.  
8 Q. But, Mr. Abinah, if you believe that either QC  
9 or QCC is discriminating, can't you issue a data  
10 request asking whichever of the two companies you think  
11 is discriminating to give you that information for each  
12 other and for anybody else you want to?  
13 A. Well, knowing the history we have with Qwest, I  
14 think it would be better to just have the Commission  
15 issue an order requiring to provide the information  
16 jointly.  
17 Q. Mr. Abinah, let me ask you another question.  
18 You talked about you need to demonstrate -- you need to  
19 evaluate the impact -- you needed this information, and  
20 I wrote down four reasons. And if I've got them wrong,  
21 correct me.  
22 First, you wanted this data to show the impact  
23 of QCC's operations on QC. Then you talked about  
24 discrimination. Then you talked about competitive  
25 conditions in the market.

50 (Pages 194 to 197)



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1 And then I thought I heard you say that you  
2 were trying to figure out whether QCC is actually  
3 competing with Cox, and I may have gotten that last one  
4 wrong. Is that a concern you have?

5 A. You know, what we trying to do is determine  
6 what level of competition is between QC and QCC. Is it  
7 a means of migrating? And I'm going to be straight up.  
8 Is it a means of migrating customers from QC to QCC?  
9 That is one of the things we would like to determine,  
10 and it's one of the questions that is likely to be  
11 asked of Staff. Is QCC in place so that QC can migrate  
12 most of their end-users to QCC?

13 Q. First of all, Mr. Abinah, isn't it true that  
14 the certificate you have proposed for QC would be --  
15 for QCC -- I'm sorry -- in this matter would be limited  
16 to enterprise customers?

17 A. That's correct.

18 Q. Okay. And, therefore, it would be impossible  
19 for QC to migrate any residential customers to QCC  
20 under that certificate, wouldn't it?

21 A. I believe all along we've been talking about  
22 enterprise market.

23 Q. And the same thing is true of small business  
24 customers; isn't that correct?

25 A. I don't believe this application would allow

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1 you to do small business.

2 Q. Okay. So your concern is about migration of  
3 enterprise customers from QC to QCC?

4 A. That's correct. But --

5 Q. Isn't it true though, Mr. Abinah, that right  
6 now every day the CLECs are out there trying to migrate  
7 enterprise customers from QC to their business?

8 A. That's correct.

9 Q. And isn't that what competition is? The  
10 different providers of service attempt to capture  
11 customers and make money by doing it?

12 A. That's correct. But at the same time, the  
13 issue is how aggressive is QCC going after QC's  
14 customers? If there's competition, there should be  
15 competition in all aspect, just not going after QC's  
16 customers.

17 Hey, if QCC is actively going after QC or after  
18 the enterprise market regardless of the provider, the  
19 report will show that because --

20 Q. Mr. Abinah, how will the report show that? All  
21 the report is going to show you is how many customers  
22 went from QC to QCC. It's not going to show you how  
23 many customers went from AT&T to QCC, is it?

24 A. But remember, at the end of the day, Staff  
25 still have the ability to issue data request to seek

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1 this information.

2 Q. So what you're telling me, Mr. Abinah, is you  
3 have a concern. And the way you want to solve this  
4 concern is to have Qwest routinely file a report every  
5 six months that's never going to give you the  
6 information that you need to know to make this  
7 determination, unless you send it more data requests to  
8 ask for more information. Isn't that what you're  
9 telling me?

10 MS. SCOTT: I object to that. I think that's a  
11 mischaracterization of his testimony.

12 ALJ WOLFE: I think it might be a little  
13 repetitive, too, Mr. Berg. I'm sorry. I think you  
14 have made your point.

15 MR. BERG: Okay. That's fine. Thank you, Your  
16 Honor. I'll move on.

17 Q. (BY MR. BERG) Mr. Abinah, you testified or  
18 mentioned in your summary that in Nebraska, after some  
19 point, QC petitioned not to be considered an ILEC  
20 anymore.

21 Do you remember that testimony?

22 A. Yes, I did.

23 Q. And isn't it true, Mr. Abinah, that that  
24 happened in Nebraska after more than -- after  
25 approximately half of QC's customers went to Cox as a

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1 competitor, not to QCC?

2 A. You know, that is -- I'm glad you brought that  
3 up. I mean, the same situation can happen here. All  
4 the QCC -- QC's customers could migrate to QC. And at  
5 that point, what is going to happen? The company, QC,  
6 can come to this Commission and request not to be  
7 dominant carrier.

8 It doesn't matter if the customer goes to  
9 Qwest. If you can demonstrate you're no longer a  
10 dominant carrier, then you can petition the FCC or the  
11 state commission to classify you as a non-dominant  
12 carrier. So, yes, the customers went to Cox.

13 Q. So the --

14 A. But the issue, Mr. Berg, can I finish,  
15 Mr. Berg, please. The issue, you are right. The  
16 customer -- according to your filing, which I've not  
17 reviewed, okay, but according to -- I've not reviewed  
18 the detail of whether it's accurate or not, whether Cox  
19 has 50 percent or more or not.

20 According to your petition, you claim that Cox  
21 has a majority of the access lines. Based on that, you  
22 no longer want to be the dominant carrier and you want  
23 to be relieved of your 251 obligation.

24 So what happen today in Arizona if QC's -- most  
25 of QC's customer migrate to QCC, will you come to the

51 (Pages 198 to 201)

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1 Commission and request to be a non-dominant carrier?  
2 Q. But. Mr. Abinah, if you look at your own  
3 recommendations, Recommendation No. 10 says that QC and  
4 QCC should be considered one entity for the purposes of  
5 evaluating the local exchange services competitive  
6 situation in future AFOR price cap proceedings.  
7 Isn't the logical answer to the hypothetical  
8 that you have created that since Qwest would have to  
9 file an application, it would be perfectly within  
10 Staff's power to argue that under the same analysis you  
11 ought to treat QC and QCC together for deciding whether  
12 one of them is a dominant carrier or not?  
13 A. I agree with you. But in that situation, if  
14 you believe that QC and QCC should be considered one,  
15 then why you objecting to QC's and QCC filing a joint  
16 report?  
17 Q. What I believe I said, Mr. Abinah, is isn't it  
18 true that Qwest has agreed to treat QC and QCC as one  
19 entity for purposes of evaluating local service  
20 competition in future AFOR price cap proceedings?  
21 A. I agree with that statement because it's right  
22 in front of me. But at the same time, why are you  
23 objecting to QCC and QC providing a joint report?  
24 Q. Mr. Abinah, I hate to go back to law school  
25 101, but the way this works is I ask questions and you

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1 answer them. I'm not sworn. I'm not under oath.  
2 Anything I testify to isn't going to do anyone any  
3 good.  
4 A. I'll rephrase my answer.  
5 Q. Okay. Please.  
6 A. Item number 10 says QC and QCC should be  
7 considered to be one entity. Based on that  
8 recommendation, according to Staff, I believe the  
9 obligation in item 10 should also be applicable to item  
10 8.b.1, 2, and 3 at the minimum.  
11 Q. Mr. Abinah, isn't it -- well, no. Let me  
12 strike that.  
13 Mr. Abinah, isn't it perfectly reasonable to  
14 assume that two companies would be willing to have  
15 their lines counted together but not be willing to  
16 undertake separate obligations in a docket? I mean, is  
17 that --  
18 MS. SCOTT: I --  
19 MR. BERG: Yeah. There's not a question a  
20 there. That's a fair comment.  
21 May I have just a second?  
22 ALJ WOLFE: Yes.  
23 Q. (BY MR. BERG) Mr. Abinah, one of Staff's  
24 recommendations is Recommendation No. 3, and that would  
25 preclude Qwest from filing an application to expand its

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1 -- preclude QCC -- so just we're being clear -- from  
2 filing an application to expand its certificate for  
3 24 months; is that correct?  
4 A. That's correct.  
5 Q. Mr. Abinah, isn't it true that under Arizona  
6 statutes and this Commission's rules that absent a  
7 provision like that in an order, any carrier is free to  
8 file an application any time to expand or contract its  
9 Certificate of Convenience and Necessity?  
10 A. I'm not a lawyer, so I don't know why you're  
11 asking me questions about statute.  
12 Q. How about the Commission rules? You're the  
13 Assistant Director; is that correct?  
14 A. That's correct.  
15 Q. And you're familiar with the Commission's  
16 rules; is that correct?  
17 A. That's correct.  
18 Q. Particularly the telecommunications rules?  
19 A. That's correct.  
20 Q. Okay. Is it your understanding of those  
21 telecommunications rules that a carrier is free to file  
22 a certificate of -- or an application to expand or  
23 contract its certificate at any time it chooses to?  
24 A. And that's what you have right here. You have  
25 applied to expand your CC&N, so we have the application

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1 before us.  
2 Q. Right. And unless this condition were put in  
3 here, Qwest would be free to choose to expand its -- to  
4 file an application whenever it chose to; isn't that  
5 correct?  
6 A. That's correct. But remember, our initial  
7 recommendation was denial of the request in QC  
8 territory. Let the Commissioners or the ALJ decide  
9 what is appropriate for you to provide or to compete  
10 with QC in your territory.  
11 Q. Mr. Abinah, one last question. I think you  
12 gave three examples of types of proceedings where this  
13 data would be useful to you.  
14 And one example was if QCC filed an application  
15 to expand its certificate, second was in a QC AFOR  
16 proceeding, and the third was in an application in a  
17 docket in which QC filed to be relieved of its  
18 carrier-of-last-resort obligations.  
19 Do you remember going through those three in  
20 your testimony?  
21 A. I believe what I said is you have a carrier-of-  
22 last-resort obligation. I don't remember mentioning  
23 you filing an application for carrier of last resort.  
24 I believe I said as an obligation of carrier of last  
25 resort.

52 (Pages 202 to 205)

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1 Q. I thought -- and, again, it's late in the day,  
2 so maybe I'm being dense. But I thought one of your  
3 examples of the circumstances where you would need this  
4 is if we filed to be relieved of our carrier-of-last-  
5 resort obligation under 251 or under state law.  
6 A. I mentioned you filing something when you're  
7 not dominant carrier. I did not say carrier of last  
8 resort.  
9 Q. That's fair. I'll change my question then.  
10 You mentioned an expansion of QC's certificate,  
11 you mentioned a QC AFOR proposal, and you mentioned an  
12 application by QC to be relieved of its obligations as  
13 a dominant carrier; is that correct?  
14 A. That's correct.  
15 Q. You don't know of your own knowledge whether or  
16 not QCC will ever file an application to expand its  
17 Certificate of Convenience and Necessity, do you?  
18 A. You know, no, I don't. But in order to make  
19 sure that QCC does not turn around the next day that  
20 they get this, that they will not turn around and file  
21 an application to provide service to residential  
22 customers in QC's territory, we believe this provision  
23 is appropriate.  
24 And the reason why is because you are the only  
25 company that we have bent over backwards to accommodate

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1 the fact that you want to provide a one-stop shopping.  
2 You brought this to our attention. In order to  
3 accommodate your concerns, in order to accommodate  
4 Qwest -- in order to accommodate Qwest and allow Qwest  
5 to provide service to large businesses as a one-stop  
6 shop, we amend our recommendation.  
7 At the same time, we believe some conditions  
8 are appropriate so that we can alleviate our concerns  
9 that were mentioned in the original Staff Report.  
10 Q. My question wasn't clear. It didn't really go  
11 to the stay-out period. It went to the reporting  
12 periods. So to that extent, I apologize.  
13 Again, the three examples you gave me of  
14 proceedings in which you would need the information in  
15 the reporting requirements were a QCC certificate  
16 expansion. And I think you testified at the beginning  
17 of that long answer you just gave me that you don't  
18 know of your own personal knowledge whether QCC will  
19 ever file to expand its certificate; isn't that  
20 correct?  
21 A. That's correct.  
22 Q. Okay. The second example you gave me, or a  
23 second example, was QC filing an application to be  
24 relieved of its dominant carrier obligation.  
25 You don't know of your own personal knowledge

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1 that QC will ever file such an application, do you?  
2 A. No, I don't. But at the same time, you have  
3 safeguards in place should the company decide to do  
4 that.  
5 Q. I think you have answered my question.  
6 The third example you gave me before was a  
7 future AFOR proceeding after the pending AFOR  
8 proceeding. You don't, as you sit here today,  
9 Mr. Abinah, know of your own personal knowledge whether  
10 there will be a future AFOR proceeding, do you?  
11 A. I don't know if there will be a future AFOR  
12 proceeding. But at the same time, there should be  
13 safeguard in place if and should Qwest Corporation  
14 comes here and requests for modification to the AFOR.  
15 Q. Is it Staff's standard practice to require  
16 regulated utilities to file reports for information for  
17 dockets that it doesn't know are coming but that it  
18 thinks might come up in the future?  
19 Is that a standard policy of the Commission at  
20 this point?  
21 A. No. We are requesting the information in this  
22 docket. We are not requesting information in future  
23 docket. We're saying we want the information in this  
24 docket. We can analyze the information should you  
25 decide to file an application down the road. But the

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1 information we're requiring is not in future docket.  
2 We're requesting the information in this docket.  
3 Q. That's a fair distinction in my question, but I  
4 think that it doesn't change my question.  
5 Is it the Commission's practice in present  
6 dockets to require the filing of reports that are  
7 calculated to deal with future dockets that have not  
8 yet been filed?  
9 A. If you're asking me has the Commission in the  
10 past required a reporting requirement on companies, the  
11 answer is yes.  
12 Q. With respect to dockets that have not yet been  
13 filed?  
14 A. Mr. Berg, I just answered your question. I  
15 said the information we are requesting is not in future  
16 docket. It's in this docket.  
17 Q. I don't think I used the word "in." I think I  
18 used "with respect to." But let's move on. I think  
19 I've made my point. I've got one last question to ask.  
20 Mr. Abinah, you keep coming back to this point  
21 that you're treating Qwest better than the other CLECs  
22 who are affiliated with ILECs; isn't that correct? I  
23 think that's been a repeated theme in your summary. Is  
24 that fair?  
25 A. I believe I mentioned it a couple of times, and

53 (Pages 206 to 209)

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1 what I said was if you look on Page 11 of Staff's  
2 original report, first CLEC that came here requesting a  
3 CC&N expansion, Staff recommended the Commission  
4 approve the expansion not within their ILEC's  
5 territory. And we bent over backwards to accommodate  
6 Qwest's request to be a one-stop shop.

7 Q. Mr. Abinah, how many access lines approximately  
8 are there in Arizona?

9 A. The last time I checked, based on the  
10 information provided by ALECA, I believe approximately  
11 5 million.

12 Q. And how many access lines was Rural Network  
13 Services barred from competing for in Decision 66841 by  
14 the Commission's decision not to let them compete in  
15 their ILEC service territory?

16 A. You know, I don't have the information readily  
17 available.

18 Q. Is it safe to say it's well under a million?

19 A. I would not speculate. I would be glad to  
20 provide information down the road, but right now I  
21 would not speculate.

22 Q. Mr. Abinah, to your knowledge, does the ILEC  
23 affiliated -- any ILEC affiliated with Rural Network  
24 Services, Valley Connections, Electric Lightwave, or  
25 Verizon Select Services, as an ILEC serve in excess of

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1 served by Qwest Corporation; isn't that correct?

2 A. Mr. Berg, I believe we filed a Staff  
3 recommendation prior to you filing your application.  
4 We understand your situation. That's why we amend our  
5 Staff Report to allow QCC to compete with QC on the  
6 enterprise market. So we not barring you from  
7 competing with QCC in the enterprise market.

8 Q. I understand. Isn't one of the reasons for  
9 that, Mr. Abinah, that you can let someone like Verizon  
10 into the state of Arizona, stop them from competing in  
11 their own ILEC territory, and there's still a market  
12 for them to compete in?

13 If you bar QCC from competing entirely in the  
14 QC service territory, you bar them from the vast  
15 majority of the Arizona market.

16 A. I don't think our recommendation bar QCC from  
17 competing. We allow you to compete in QC's area for  
18 large business customers.

19 Q. But if you kept QCC from competing in QC's  
20 territory for large business customers, you would be  
21 barring them from most of the service in Arizona?

22 MS. SCOTT: Your Honor --

23 THE WITNESS: We did not bar QCC from doing  
24 that. We're recommending that QCC be allowed to  
25 compete for large business customers in QC's territory.

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1 a million lines in this state?

2 A. In the state of Arizona, Qwest has the market  
3 share.

4 Q. In the state of Arizona, is it fair to say that  
5 the largest single service territory by some order of  
6 magnitude is Qwest's service territory?

7 A. I just said in the state of Arizona, Qwest have  
8 the market share.

9 Q. So if you bar someone like Verizon Select from  
10 competing in their own ILEC territory but you let them  
11 compete in the Qwest ILEC territory, you're letting  
12 them compete in most of the market in Arizona, aren't  
13 you?

14 A. Which QCC is also free to do that. If you want  
15 to compete outside your QC territory, we recommending  
16 that today.

17 Q. But, Mr. Abinah, isn't it true that if you say  
18 to Verizon, you can't compete with Verizon as an ILEC,  
19 Verizon still can compete for about 90 percent of the  
20 lines in this state because those are served by Qwest  
21 predominantly and then by other carriers.

22 But if you say to Qwest, QCC, you can't compete  
23 in Qwest's service territory, you bar them from the  
24 vast majority of the market because, as you testified  
25 yourself, the majority of access lines in the state are

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1 MR. BERG: I have nothing further. Thank you.

2 MS. SCOTT: Okay.

3 ALJ WOLFE: Thank you.

4  
5 EXAMINATION

6  
7 Q. (BY ALJ WOLFE) Good afternoon, Mr. Abinah.

8 A. Good afternoon, Your Honor.

9 Q. When you first started testifying today, you  
10 listed a parade of horrors that could happen if QCC's  
11 application is granted even subject to believe Staff's  
12 recommendations in S-2, and yet you say that Staff bent  
13 over backwards to accommodate Qwest's request to  
14 provide one-stop shopping.

15 And that raises a question for me. Why did  
16 Staff do that?

17 A. I believe Mr. Fimbres mentioned that earlier  
18 that large customers are savvy customers. They know  
19 what they're doing, and we believe they can take care  
20 of themselves.

21 And that's the reason why we listen to Qwest,  
22 tried to address their concern, and that's why we  
23 decide to modify our recommendation to include just  
24 large business customers.

25 Q. Well, Mr. Abinah, apparently Staff -- if you

54 (Pages 210 to 213)

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1 need all of these filings that are required by Staff's  
2 recommended conditions, let me ask this question.  
3 Does Staff know how granting this application  
4 is going to affect QC?  
5 A. We don't. That's why we need the information.  
6 Q. Okay. Is it possible there may be an adverse  
7 impact on QC?  
8 A. It's possible.  
9 Q. Would that adverse impact mostly affect  
10 residential customers?  
11 A. I believe it might. That's why we trying to  
12 have a stay-out provision, and that's why we're  
13 recommending QCC to compete for large business  
14 customers in QC's territory.  
15 Q. Is it possible that allowing QCC to compete for  
16 large business customers in QC's territory might have  
17 an adverse impact on QC?  
18 A. Your Honor, there could be some revenue  
19 shifting if customer move from QC to QCC, yes. There  
20 could be revenue loss. There could be other issues,  
21 but, yes, there could be adverse effect.  
22 Q. Okay. Given the possibility for that revenue  
23 shifting, why is it appropriate for the Commission to  
24 grant this application to allow QCC to provide one-stop  
25 shopping for large business customers?

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1 A. And that's why, Your Honor, it's important that  
2 we get the information so that down the road we can  
3 evaluate -- since we don't know exactly what the impact  
4 will be, if we have that information, we can easily --  
5 when we analyze the information, if and when --  
6 depending on the impact on QC, if and when QC comes and  
7 amend the application and provide business -- provide  
8 service to small and residential customers, we will use  
9 that information -- there's tendency that we will use  
10 that information appropriately. I don't want to  
11 prejudge the application.  
12 Q. After that point, though, hasn't the horse left  
13 the barn and the barn door is closed if QCC already has  
14 this authority?  
15 A. You know what, that's correct, Your Honor. I  
16 can't defend that. You're right. That's correct.  
17 Q. Are these large business customers, these  
18 enterprise customers, some of the most lucrative  
19 customers that QC has?  
20 A. That's correct.  
21 Q. Is it possible that QC could provide all of the  
22 services in one-stop shopping?  
23 A. I think there's a restriction based on Section  
24 271, 272, I'm not sure. I think they cannot. QC  
25 cannot, especially in-region services. That is why the

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1 Telecommunication Act requires them to have a separate  
2 subsidiary to do the long distance. You know, prior to  
3 -- I'm sorry.  
4 Q. No. Go ahead.  
5 A. Prior to '96 Act, you know, QC can only  
6 provide, I believe, intraLATA, intrastate. They cannot  
7 do in-region. So that's why the Telecom Act required  
8 them to have a separate subsidiary. So QC, I don't  
9 believe, can do a one-stop shopping.  
10 Q. Do you believe that was the intent of the  
11 Telecom Act?  
12 A. I think that the intent of the Telecom Act is  
13 to make sure that they open their network to CLEC.  
14 Q. To their competitive affiliates or to other  
15 CLECs?  
16 A. To other CLECs.  
17 Q. So the purpose of the Telecom Act isn't to  
18 allow QCC to cherry-pick QC's lucrative customers, is  
19 it? You can respond to that at length.  
20 A. The goal of the Telecom Act is to promote  
21 competition, I believe, at the residential and the  
22 enterprise level.  
23 And as you know, prior to '96, oh, before that,  
24 most -- the Bell Operating Company controls the  
25 network, the local network. And as you know, in order

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1 to provide local telecommunications services, it's  
2 capital intensive. It requires a lot of investment.  
3 And that is why there's rules set by the FCC based on  
4 the Telecom Act that requires the ILECs, especially the  
5 Bell Operating Companies, to open their network to  
6 competition.  
7 The same obligation wasn't imposed on the  
8 CLECs. The same obligation was imposed on the rural  
9 ILEC only if there's a bona fide request and it's  
10 consistent with public interest and it will not have  
11 economic impact on small ILECs. So the obligation is  
12 mainly on the Bell Operating Companies.  
13 So to the best of my knowledge, I think the  
14 reason why there should be a separate subsidiary is the  
15 issue of nondiscrimination.  
16 Q. Okay. Let me ask again, then, why is Staff  
17 altering its recommendation from its original Staff  
18 Report?  
19 A. Like I say, we try to accommodate Qwest's  
20 concern about the one-stop shopping.  
21 Q. Why do you think that that's in the public  
22 interest?  
23 A. May I take a minute?  
24 Q. Sure. I have to think about it a lot if I'm  
25 going to recommend it to the Commission.

55 (Pages 214 to 217)

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1 A. Why do I believe it's in the public interest?  
2 If you ask Staff, or if you ask me, our original  
3 position will be denial of QCC application from -- or  
4 barring QCC from providing service in QC's territory.

5 But after further review, after further  
6 conversation with the company, we also look at what  
7 they did in other states. For instance, Nebraska. We  
8 look at what they did in Nebraska and some other  
9 states.

10 We believe in the interest of compromise, it's  
11 appropriate to allow QC to compete in QC's territory  
12 for large businesses. So to me, I think strictly it's  
13 an interest of compromise. I mean, an issue of public  
14 interest.

15 I would be glad to address it in a subsequent  
16 Staff Report, but today my answer for you today,  
17 sincerely speaking, is we just decide to compromise and  
18 just to -- that's why we impose those conditions to  
19 address -- to alleviate Staff's concerns.

20 Q. And that leads me to another issue. The Staff  
21 report S-1 did address the things that I requested be  
22 addressed, the compliance issues with Decision  
23 No. 66612.

24 A. Yes, ma'am.

25 Q. And a witness who testified earlier on behalf

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1 of Staff talked about these contracts or agreements  
2 that were written or oral that have to be provided to  
3 the Commission that are between QCC and its affiliates.

4 And what Staff did was just ascertain that they  
5 were posted on the website, but there was testimony  
6 that the content of the contracts wasn't reviewed and  
7 that Staff, therefore, wouldn't know if there were any  
8 anti-competitive terms in the contracts.

9 Given this monitoring in the past of QCC by  
10 Staff, how can the Commission be assured that Staff  
11 would monitor and recommend appropriate action on these  
12 filings that Staff's recommending in Exhibit S-2?

13 A. Your Honor, on the issue of interconnection  
14 agreement or the contract, I say sincerely to you  
15 there's a different -- we have a different staff that  
16 reviews interconnection agreement and resale agreement,  
17 and the individual is not here today.

18 And I believe, according to Qwest, it went into  
19 effect by operation of law.

20 Q. Okay. That was the interconnection agreement.  
21 What I was asking about was Finding of Fact No. 59 in  
22 Decision No. 66612. That was addressed in the Staff  
23 Report in S-1. See if I can find the page.

24 A. On Page 5.

25 Q. And that's what I was referring to. Given the

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1 fact that Staff did not monitor those filings for  
2 evidence of anti-competitive behavior, how can the  
3 Commission be assured that Staff would monitor these  
4 filings that Staff is requesting as a condition of the  
5 grant of QCC's expanded CC&N as recommended in S-2?

6 A. All I can speak to is the future monitoring. I  
7 think -- well, if we request this information, I can  
8 assure you that on an ongoing basis, whatever  
9 information we request in this docket, Staff will  
10 monitor it accordingly.

11 Q. Okay. And in regard to the federal/state  
12 individual audit --

13 A. Yes, ma'am.

14 Q. -- what basically were the findings of that  
15 audit?

16 A. Your Honor, the 272 biannual audit -- and if  
17 you look at the report, it took place, I believe,  
18 sometime in July 2003. Qwest Corporation did not get  
19 their 271 approval until December 2003, so Arizona was  
20 not part of this report. We attended the audit. But  
21 because we don't have the data to support the audit,  
22 Arizona is not included in this report.

23 Q. Well, what was QCII's performance in other  
24 areas?

25 A. I sincerely have not looked at this

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1 information, but I can look at that and file an amended  
2 report to address this issue. But I could tell you  
3 that this report did not address Arizona because at  
4 that time -- for that period of time, we don't have any  
5 report or any information or any data because we just  
6 got a 271.

7 And the period covered by the audit is from  
8 January '03 towards, I believe, September of '03, and  
9 at that point Arizona did not have information or data  
10 as it relates to Qwest's performance during this period  
11 of time. So that's why we were not included in this  
12 report.

13 And that's why we believe we should use the  
14 two-year period because the new audit, the joint  
15 federal/state audit just began, I believe, last week.  
16 And as we speak, Staff will be represented in Denver  
17 for this audit, for the next audit. We were not  
18 represented for the previous audit. But I've already  
19 assigned a staff to attend the audit in Denver on an  
20 ongoing basis. So we were not included in this audit.

21 Q. Okay.

22 A. And like I said, the reason why, because we  
23 didn't have the 271. The Commission did not grant  
24 Qwest Corporation 271 until, I believe, September '03,  
25 and the FCC granted them 271 in December '03. So we

56 (Pages 218 to 221)

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1 didn't have enough data to participate in this audit.  
2 Q. So that's why Staff was not able to address the  
3 scope and status of the audit?  
4 A. That's correct. Because we were just an  
5 observer. We didn't actually participate in the actual  
6 audit.  
7 Q. Okay. And Staff didn't look at that audit in  
8 formulating its recommendations on QCC's application in  
9 this case?  
10 A. Sincerely speaking, no. No.  
11 Q. Okay. I asked a question earlier of  
12 Mr. Bostwick about the Affiliated Interest Rules waiver  
13 and that given that Staff's recommendation has changed,  
14 whether that changes the recommendation in S-1 on  
15 Page 7, the first full paragraph.  
16 Could you address that?  
17 A. Yes, ma'am. On Page 7 of Staff Report, we  
18 believe there's no need to revisit the waiver at that  
19 time because Staff recommended a denial of the  
20 application in QC's territory, and that's why we  
21 believe it's appropriate to impose this condition.  
22 If we were to recommend approval at the first  
23 instance, we will have recommended that the Commission  
24 revisit this affiliate waiver. But because our  
25 recommendation at that time was to deny QCC's

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1 application or to deny QCC from competing in QC's  
2 service territory, we believe at that time that it's  
3 not appropriate to revisit the rules, the waiver. But  
4 if you ask me today, the recommendation would be  
5 different.  
6 Q. What would it be? Because I'm asking you  
7 today.  
8 A. It would be -- we would like to revisit the  
9 waiver based on the fact that we are recommending QCC  
10 be allowed to compete in QC's territory for large  
11 businesses.  
12 Q. Okay. And you don't have a specific  
13 recommendation other than that?  
14 A. Other than that, yes, that's correct, Your  
15 Honor.  
16 ALJ WOLFE: I don't have any more specific  
17 questions. I probably do have questions for the  
18 attorneys about what we'll do after today.  
19 But Ms. Scott, did you have redirect?  
20 MS. SCOTT: Your Honor, I do have a little  
21 redirect, but I know everyone is exhausted and it will  
22 be quick.  
23 ALJ WOLFE: Well, we are here, so we might as  
24 well. It takes more time for us to come back than for  
25 us to finish up.

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1 MS. SCOTT: I don't have a lot.  
2  
3 REDIRECT EXAMINATION  
4  
5 Q. (BY MS. SCOTT) Mr. Abinah, do you recall the  
6 discussion with Mr. Berg regarding S-2 and the  
7 reporting information that Staff is questioning in  
8 8.b.1, 2, and 3?  
9 A. Yes.  
10 Q. And do you recall Mr. Berg asking a question  
11 regarding discrimination?  
12 A. Depending on which question. I believe he  
13 asked a couple of questions regarding discrimination.  
14 Q. Okay. If Staff obtained the data in 8.b.1, 2,  
15 and 3, and Staff saw a mass migration of customers from  
16 QC to QCC, would one possible explanation of the mass  
17 migration be that Qwest was discriminating in favor of  
18 its affiliate?  
19 A. That's possible.  
20 Q. Okay. You also had a discussion with Mr. Berg  
21 regarding the need to track information with respect to  
22 business accounts and lines and revenues moving from QC  
23 to QCC; correct?  
24 A. Yes.  
25 Q. And Mr. Berg asked you a few questions, well,

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1 if you're requiring that of QCC and QC, why aren't you  
2 requiring it of QC and AT&T; correct?  
3 A. I remember that question.  
4 Q. Can you tell us why we need to track the  
5 information from QC to QCC and not the information from  
6 QC to AT&T?  
7 A. I believe I discussed it earlier that when QCC  
8 is dominant carrier -- or QC. I'm sorry. QC is the  
9 dominant carrier, and QC -- AT&T is not trying to  
10 compete with an ILEC that has most of the access lines.  
11 I mean, AT&T is actually competing with QC for  
12 customers. They're not competing against each other.  
13 But QCC will be competing against QC.  
14 Q. Okay. And then in addition to obtaining the  
15 information for compliance purposes, is it fair to  
16 state that the information will also help Staff in its  
17 assessment under Staff Recommendation 3?  
18 A. That's correct.  
19 Q. Let's see here. Okay. Mr. Berg also had a  
20 series of questions for you relating to other carriers'  
21 abilities to apply for a CC&N; correct?  
22 A. That's correct.  
23 Q. And he characterized the other carriers'  
24 ability as being unrestricted; correct?  
25 A. Yes.

57 (Pages 222 to 225)



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1 Q. Isn't the fact that -- isn't it correct that  
2 the reason why we're requiring information from QCC in  
3 this case is because we have not allowed other CLECs in  
4 their affiliated ILEC territory to offer competitive  
5 local service?  
6 A. That's correct.  
7 Q. And this is the first time that Staff is really  
8 making that recommendation; is that correct?  
9 A. That's correct.  
10 Q. And Mr. Berg, with respect to the reporting  
11 requirement, I believe he identified or stated that you  
12 had identified three reasons why it was necessary.  
13 Do you recall that?  
14 A. I recall that discussion.  
15 Q. One of them was for QCC certification  
16 expansion; correct?  
17 A. Yes.  
18 Q. One of them was in the event that Qwest would  
19 want to be relieved of its dominant carrier status?  
20 A. That's correct.  
21 Q. And the other one was for a future AFOR  
22 proceeding; is that correct?  
23 A. That's correct.  
24 Q. But it's also true that we're requesting the  
25 information for compliance reasons; correct?

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1 A. I believe I mentioned that also.  
2 Q. Okay. Mr. Berg also asked you with respect to  
3 a reclassification from dominant to non-dominant  
4 status, why the information would be required when the  
5 Commission has 10?  
6 A. I recall that.  
7 Q. Recommendation 10; correct?  
8 A. Yes.  
9 Q. However, the dominant to non-dominant  
10 classification that you were talking about occurred at  
11 the FCC; correct?  
12 A. I believe that's correct.  
13 Q. Okay.  
14 A. It occurred at the FCC for the state of  
15 Nebraska, just to clarify that.  
16 Q. But the decision was made at the FCC?  
17 A. Yes.  
18 Q. Okay. And then, let's see. Judge Wolfe asked  
19 you a question about Exhibit S-1 and about Staff's  
20 review of the contracts that are on QCC's website;  
21 correct?  
22 A. Yes.  
23 Q. And we did state, correct, that we did not  
24 monitor or review the contracts in detail for evidence  
25 of anti-competitive provisions; correct?

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1 A. That's correct.  
2 Q. It is correct, however, isn't it, that  
3 competitive carriers have access to those agreements?  
4 A. I believe they do.  
5 Q. And would you say that if there were anti-  
6 competitive provisions contained in one of those  
7 agreements that it may be likely that a competitive  
8 carrier would bring that to the attention of the state  
9 commission?  
10 A. That's possible.  
11 MS. SCOTT: That's all, Your Honor.  
12 ALJ WOLFE: Thank you.  
13 Recross?  
14 MR. BERG: Just very quickly. And I know we've  
15 all been here a long time.

RECROSS-EXAMINATION

19 Q. (BY MR. BERG) Mr. Abinah, I've just got a  
20 couple of quick questions. I promise I'll make them  
21 quick.  
22 Isn't it true today that if you're an  
23 enterprise customer in the QC service territory and you  
24 want to do one-stop shopping for local, intraLATA long  
25 distance, interLATA long distance, and interstate long

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1 distance, you can't go to QC and get all of those  
2 services from QC?  
3 A. I believe the Judge asked me that question, and  
4 my answer is you're correct. You cannot go to QC.  
5 Q. And so presently today, if you're a customer in  
6 the QC service territory and you want this package of  
7 services with one-stop shopping, you've got to go to  
8 one of the CLECs to get it; is that correct?  
9 A. Well, that's an option. You can either go to  
10 CLEC or you can take some from Qwest and take some from  
11 QCC or some from QLDC.  
12 Q. But if you want to buy it all in one package at  
13 one place, if by definition if you want to do one-stop  
14 shopping, you've got to buy it from a CLEC; isn't that  
15 correct?  
16 I'm not trying to argue with you. I'm just  
17 trying to be sure that you and I are talking about the  
18 same thing.  
19 A. Today, if you want your one-stop shopping,  
20 because QCC has some restriction based on the Telecom  
21 Act, yes, you're correct.  
22 Q. You said QCC. Did you mean --  
23 A. I'm sorry. QC. I'm sorry. Thank you.  
24 Q. Mr. Abinah, isn't it in the consumers' best  
25 interest to have one more place to go get one -- to be

58 (Pages 226 to 229)



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1 able to do one-stop shopping and get that service at  
2 least for large enterprise customers, and isn't that  
3 why Staff's recommended that QCC be permitted to  
4 provide local exchange service and long distance  
5 service to enterprise customers in the QC service  
6 territory?  
7 A. In response to the Judge's question earlier  
8 about the public interest, you know, which I mentioned,  
9 we modified our recommendation in the interest of  
10 compromise. In addition to that, you're right. There  
11 could be some consumer benefit to that.  
12 Q. So the consumers benefit from having an  
13 additional place they can go for one-stop shopping. I  
14 mean, they could choose to go to AT&T or MCI, but they  
15 have an option here that's labeled QCC where they don't  
16 have that option before.  
17 A. I agree with you. But like I said, they can  
18 get it from QC, QCC, and QLDC. But for one-stop  
19 shopping, you're correct.  
20 Q. And one of the reasons that Staff was willing  
21 to go forward with authorizing QCC to provide limited  
22 service in the QC service territory, subject to  
23 restrictions, was in part that that option would then  
24 be available to customers, an additional option would  
25 be available?

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1 A. That's correct.  
2 MR. BERG: Okay. I have nothing further.  
3 Thank you.  
4 ALJ WOLFE: That just raises one question that  
5 I have. I'm sorry.  
6  
7 FURTHER EXAMINATION  
8  
9 Q. (BY ALJ WOLFE) Whenever you said you agreed  
10 with Mr. Berg that there's a consumer benefit, there's  
11 one class of consumers that benefits; correct?  
12 A. Enterprise. Yes, ma'am.  
13 ALJ WOLFE: Okay. Just wanted to make sure.  
14 Thank you for your testimony today. You're  
15 released as a witness.  
16 (Mr. Abinah was excused as a witness.)  
17 ALJ WOLFE: And we need to talk about where we  
18 would go from here.  
19 Ms. Scott, your witness stated that he would  
20 like to make some new recommendations regarding the  
21 Affiliated Interest Rules, and I'm sure that QCC would  
22 like to see the content of that.  
23 MR. BERG: And perhaps respond, just  
24 theoretically at least.  
25 ALJ WOLFE: Right. And I'll just tell you

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1 right now that I'm not willing to do it just as a  
2 late-filed exhibit. If there's going to be something  
3 like that, I would need to have a witness so that I  
4 could ask questions and so that the other -- that QCC  
5 could ask questions, too.  
6 So we just need to talk about a schedule. If  
7 you want to talk about it today, we can, or the parties  
8 can get together and make a feeling on a proposed  
9 procedural schedule.  
10 MS. SCOTT: I think it would be good if we  
11 conferred and got back to you.  
12 ALJ WOLFE: That would be fine. And we can do  
13 that with a telephonic procedural conference if the  
14 parties are amenable to that. I think that's easier  
15 than making a written filing.  
16 MR. BERG: That would be fine with us to do it  
17 telephonically. There's no reason to do a written  
18 filing.  
19 ALJ WOLFE: And I'll just expect to hear from  
20 you, then, within a week or two.  
21 MR. BERG: Oh, it will be sooner than two  
22 weeks.  
23 ALJ WOLFE: I'm sure you have a reason to do  
24 that. Okay. We're adjourned for the day.  
25 Oh, was there something else you need to put on

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1 the record.  
2 MR. BERG: There were a few other things that  
3 we had talked about. For example, I think you wanted  
4 us to verify that there was nothing in Staff's report  
5 that we thought was factually inaccurate as opposed to  
6 the policy disagreements we have.  
7 I think Ms. LaFave volunteered to get some  
8 supplemental information to people. We'll try to do  
9 that by a week from today. I don't see any reason --  
10 we'll probably do better than that, but we'll have it  
11 in by a week from today.  
12 ALJ WOLFE: Okay. That sounds good.  
13 MS. SCOTT: Staff will as well.  
14 ALJ WOLFE: Okay. Thank you. We're adjourned  
15 for today pending the parties meeting in a telephonic  
16 procedural conference within a week or so.  
17 (The Hearing adjourned at 5:30 p.m.)  
18  
19  
20  
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23  
24  
25

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1 STATE OF ARIZONA )  
2 ) ss.  
3 COUNTY OF MARICOPA )  
4  
5

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